

**TAB 1**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

ALEX NGUYEN  
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Santa Clara, CA 95055  
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Complainant,

v.

CELLCO PARTNERSHIP &  
AFFILIATED ENTITIES d/b/a  
VERIZON WIRELESS

Defendant.

Proceeding No. 16-242  
File No. EB-16-MD-003

**REPLY AND LEGAL ANALYSIS**

October 31, 2016

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## REPLY AND LEGAL ANALYSIS

To: The Commission.

Pursuant to Section 1.726 of the Commission's rules, I, Alex Nguyen, hereby reply to the Answer filed by Cellco Partnership & Affiliated Entities d/b/a Verizon Wireless (“Verizon”).

### I. PARTIES

1. No reply to Paragraph 1 is necessary.

2. Verizon states that it isn't clear what is meant by the use of the capitalized term “Affiliated Entities” in Paragraph 2. The legal name of the Defendant is “Cellco Partnership & Affiliated Entities” according to the Form 499 that Verizon filed with the Commission. Verizon expresses its belief that I didn't appear interested in or amenable to any course other than asserting my claims before the Commission. I disagree with Verizon's characterization: I was interested and amenable to Verizon ceasing to engage in *prima facie* violations of the Commission's rules and made this clear in two separate letters. After Verizon twice denied its conduct violated the Commission's rules (with specious arguments), I believed additional correspondence would be fruitless and asserted my claims before the Commission.

### II. BACKGROUND

#### A. The C Block Rules and the 2012 Order and Consent Decree

3. Verizon admits that in 2007, the Commission adopted openness rules for licensees of spectrum in Block C of the 746–757 and 776–787 MHz bands. (In this reply, “C Block” refers to the Upper 700 MHz Band C Block). In particular, Verizon doesn't deny that discussing the basis for these rules, the Commission recognized evidence that wireless service providers “block or degrade consumer-chosen hardware and applications without an appropriate justification.”<sup>1</sup>

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<sup>1</sup> 22 FCC Rcd. 15363 ¶¶ 200–201 (2007)

4. I admit I quoted a “third party article” by Sascha Segan published by PC Magazine. Verizon denies it presently “compel[s]” customers to purchase or pay fees for its Pix Messaging and Get It Now services but doesn't deny it had done so in the past. Specifically, Verizon doesn't deny it justified disabling Bluetooth and USB features as a “fraud prevention” tactic.<sup>2</sup> I admit Verizon no longer offers those services under those names; however, Verizon presently offers equivalent services under the Multimedia Messaging and Media Center names, respectively. I disagree with Verizon's opinion that Paragraph 4 in the Background section doesn't appear to have any relevance: It provides background for later paragraphs. Specifically, Verizon's disabling of Bluetooth and USB features (which forced customers to use Verizon's network to transfer media and incur Verizon's charges for doing so) foreshadowed Verizon's disabling of FM radio capabilities (which forces customers to use Verizon's network to stream audio and incur Verizon's charges for doing so).

5. Verizon doesn't deny Jonathan Zdziarski is a computer security expert.<sup>3</sup> I admit I quoted an article by Zdziarski published in Pen Computing Magazine and available on the “third party website” of Zdziarski; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the article. Verizon admits the next paragraph of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Zdziarski published the article in 2004 and updated it through 2006. Verizon denies that the “security issue” it alleged existed was specious, but as usual, neglects to substantiate its allegation. Zdziarski's expert analysis substantiates that Verizon's allegation was

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2 Sascha Segan. *Motorola V710 Review & Rating*.  
<http://www.pcmag.com/article2/0,2817,1639783,00.asp> (August 26, 2004)

3 Jonathan Zdziarski. *About Me*. [https://www.zdziarski.com/blog/?page\\_id=202](https://www.zdziarski.com/blog/?page_id=202) (October 14, 2016)

specious.<sup>4</sup> I dispute Verizon's denial that the quoted article accurately reflected Verizon's position on this issue: The statements by Verizon's executive director of corporate communications speak for themselves. I disagree with Verizon's opinion that Paragraph 5 in the Background section doesn't appear to have any relevance: It provides background for later paragraphs. Specifically, Verizon's disabling of Bluetooth and USB features (which forced customers to use Verizon's network to transfer media and incur Verizon's charges for doing so) foreshadowed Verizon's disabling of FM radio capabilities (which forces customers to use Verizon's network to stream audio and incur Verizon's charges for doing so).

6. I dispute Verizon's denial that in 2005, customers sued the carrier for disabling Bluetooth features on the Motorola v710: Verizon's disabling of the features was a prerequisite for Verizon's failure to disclose it had done so. See Paragraph 2 of the plaintiffs' Second Amended Complaint: "Verizon Wireless intentionally disabled the majority of the Bluetooth® capabilities, which are inherent features of the V710 as manufactured by Motorola, Inc., before selling them to its customers."<sup>5</sup> I dispute Verizon's denial that it "acknowledged its position as gatekeeper." The statement by Brenda Raney, Verizon's Executive Director of Corporate

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4 Jonathan A. Zdziarski. *The Motorola v710: Verizon's New Crippled Phone*. <https://web.archive.org/web/20060703041009/http://www.nuclearelephant.com/papers/v710.html> (July 3, 2006) [What Security Issue? I had heard this story from Verizon, which was that they were investigating security issues with the phone, but this appeared only to be an afterthought in comparison with Verizon's profitability needs. The story didn't appear to hold water, and I got the feeling she understood that. Bluetooth has some basic front-line security designed to prevent someone from arbitrarily transferring files to/from the phone without performing a "bonding" ritual. On top of this, the v710 sports a "stealth mode" where it will remain invisible from discovery unless the owner specifically makes it visible (at 60-second intervals) so there's little chance a stranger will even know it's there let alone have the MAC address.]

5 *Opperman, et al. v. Cellco Partnership d/b/a Verizon Wireless*, Case No. BC 326764, Superior Court of the State of California for the County of Los Angeles. [https://www.verizonwireless.com/pdfs/v170settlement/V710\\_Proposed\\_Second\\_Amended\\_Complaint.pdf](https://www.verizonwireless.com/pdfs/v170settlement/V710_Proposed_Second_Amended_Complaint.pdf)



Communications, in the Wall Street Journal article (which Verizon admits I accurately quoted) speaks for itself: “It’s always the carrier’s decision how a phone will reach the market and what form it will take.”<sup>6</sup> I disagree with Verizon’s opinion that Paragraph 6 in the Background section doesn’t appear to have any relevance: It provides background for later paragraphs. Specifically, Verizon’s disabling of Bluetooth and USB features (which forced customers to use Verizon’s network to transfer media and incur Verizon’s charges for doing so) foreshadowed Verizon’s disabling of FM radio capabilities (which forces customers to use Verizon’s network to stream audio and incur Verizon’s charges for doing so).

7. I admit I quoted an article by Shelley Solheim available on the “third party website” of eWeek, a publication of Ziff Davis. Verizon admits that the article speaks for itself and doesn’t deny that Verizon admitted it disabled features to block customers from downloading applications from sources other than Verizon.<sup>7</sup> I disagree with Verizon’s opinion that Paragraph 7 in the Background section doesn’t appear to have any relevance: It provides background for later paragraphs. Specifically, Verizon’s disabling of Bluetooth and USB features (which forced customers to use Verizon’s network to transfer media and incur Verizon’s charges for doing so) foreshadowed Verizon’s disabling of FM radio capabilities (which forces customers to use Verizon’s network to stream audio and incur Verizon’s charges for doing so).

8. I dispute Verizon’s denial that Paragraph 8 of the Complaint completely and

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6 Christopher Rhoads. *Cellphone Users Sue, Saying Carrier Cut Phone’s Features*. <http://www.wsj.com/articles/SB110557581692624772> (January 13, 2005)

7 Shelley Solheim. *Verizon Wireless Users Sue Over Disabled Bluetooth Features*. <http://www.eweek.com/c/a/Mobile-and-Wireless/Verizon-Wireless-Users-Sue-Over-Disabled-Bluetooth-Features> (January 14, 2005) [“The v710 includes Get It Now, our virtual mall of games and productivity tools that customers can download. The agreements we have with our content providers preclude our allowing anyone to download these applications beyond the phone. The open architecture of Bluetooth could also allow customers to download Get It Now applications beyond the phone.”]

accurately reflects the terms of the settlement of the lawsuit referenced in Paragraph 6 but otherwise agree with Verizon that the terms of the settlement (and Paragraph 8) speak for themselves. I admit I quoted a Motorola statement in an article by David Berlind available on the “third party website” of ZDnet, a publication of Ziff Davis. In particular, Verizon admits the article speaks for itself and doesn't deny Verizon continued to disable multimedia and Internet connection features that allow customers to use their own ringtones, images, and videos instead of purchasing them from Verizon.<sup>8</sup> I disagree with Verizon's opinion that Paragraph 8 in the Background section doesn't appear to have any relevance: It provides background for later paragraphs. Specifically, Verizon's disabling of Bluetooth and USB features (which forced customers to use Verizon's network to transfer media and incur Verizon's charges for doing so) foreshadowed Verizon's disabling of FM radio capabilities (which forces customers to use Verizon's network to stream audio and incur Verizon's charges for doing so).

9. I dispute Verizon's denial that it blocked customers from downloading ringtones from sources other than Verizon. Paragraphs 4–8 establish Verizon had done so, Verizon didn't deny it had done so in Paragraphs 4–8, and Verizon doesn't deny the assertions in the Wired magazine article I cited (that Verizon's Motorola RAZR v3 software permanently blocked customers from using their own ringtones): “If you've ever had version 3 on your Verizon RAZR, or if you purchased your RAZR from Verizon after they introduced the ban, your RAZR's MP3

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8 David Berlind. *Buyer Beware: Verizon Wireless and SprexTel disabling features on handsets they sell*. <http://www.zdnet.com/article/buyer-beware-verizon-wireless-and-sprexTel-disabling-features-on-handsets-they-sell/> (August 2, 2006) [“IMPORTANT NOTE: This downloadable software is fully supported for Cingular and T-Mobile customers. However, portions of this software's functionality have been disabled for Verizon or Nextel customers, so Motorola Phone Tools will not work fully with phones using those carriers. If you are a Verizon customer, all multimedia and internet connection features in this software will be disabled due to carrier request.”]

ringtone feature will stay broken.”<sup>9</sup> Confusingly, Verizon states it no longer provides ringtone downloads from the Media Store; however, as of October 23, 2016, the Verizon Wireless Media Store was offering a ringtone for *Big Amount*, a single that 2 Chainz dropped on September 23, 2016, a day after Verizon filed its Answer.<sup>10</sup>

10. I admit I quoted an article by James M. Turner available on the “third party website” of InformationWeek, a publication of CMP Technology; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint completely and accurately quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. In spite of 47 CFR § 1.724(b), Verizon submits a general denial of the assertions contained in Paragraph 10. Verizon admits that the cited article speaks for itself and doesn't specifically deny that Verizon disabled built-in tethering features and charged \$60.00/month to re-enable them or that Verizon's director of data network services alleged devices like the Palm Treo 700w didn't meet Verizon's “requirements” but refused to provide evidence, claiming that such information is “proprietary.”<sup>11</sup> I disagree with Verizon's opinion that Paragraph 10 in the Background section doesn't appear to have any relevance: It provides background for later paragraphs. Specifically, Verizon's disabling of tethering features built into devices like the Palm Treo 700w foreshadowed Verizon's disabling of tethering features built into iPhones and later smartphones.

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9 Eliot Van Buskirk, Sean Michaels. *Verizon Cripples New RAZRs*.  
[http://www.wired.com/2006/07/verizon\\_cripple/](http://www.wired.com/2006/07/verizon_cripple/)

10 Verizon Wireless. Media Store. <https://mediastore.verizonwireless.com/> (October 22, 2016)

11 James M. Turner. *Verizon Prevents Treo Use As 3G Modem*.  
<http://www.informationweek.com/verizon-prevents-treo-use-as-3g-modem/d/d-id/1039511>  
(January 12, 2006) [“According to Verizon, the Treo doesn't currently meet requirements they specify for their network.... He said that the currently-sold V CAST phones do not properly interact with their network when used as a modem, but refused to cite examples, claiming that such information is proprietary.”]

11. I admit I quoted articles published on the “third party websites” of Windows Central, GigaOM, webOS Nation, and PCWorld magazine. Verizon denies it presently “compel[s]” customers to pay for its VZ Navigator service and denies that it presently “impermissibly block[s]” third-party access to GPS capabilities but doesn't deny it had done so in the past. I dispute Verizon's denial that the quoted articles accurately capture Verizon's position with respect to GPS capabilities: Verizon's admission that it blocked third-party access to GPS capabilities speaks for itself.<sup>12</sup> I disagree with Verizon's opinion that Paragraph 11 in the Background section doesn't appear to have any relevance: It provides background for later paragraphs. Specifically, Verizon's blocking of third-party GPS applications foreshadowed Verizon's blocking of third-party tethering applications.

12. No reply to Paragraph 12 is necessary.

13. No reply to Paragraph 13 is necessary.

14. No reply to Paragraph 14 is necessary.

15. Verizon denies it blocked third-party tethering applications, but Google confirmed it made tethering applications unavailable at the request of Verizon and other wireless carriers.<sup>13</sup> Verizon denies that it disables built-in tethering features and charges an additional \$20.00/month to re-enable them and alleges the existence of its own “tethering service” (in connection with

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12 Lincoln Spector. *Verizon Locks Out GPS Competition, Customers Complain*. [http://www.pcworld.com/article/161019/verizon\\_locks\\_out\\_gps\\_competition.html](http://www.pcworld.com/article/161019/verizon_locks_out_gps_competition.html) (March 10, 2009) [Although the spokesperson stated that “we do not intend to have a monopoly on GPS with Navigator for our devices,” she admitted that Verizon generally disables support for plain, old, standalone GPS in the smartphones that it uses. That effectively locks out GPS programs created without Verizon's participation.]

13 Phil Goldstein. *Group claims Verizon's ban of tethering apps violates 700 MHz open access rules*. <http://www.fiercewireless.com/story/group-claims-verizons-ban-tethering-apps-violates-700-mhz-open-access-rules/2011-06-07>

“certain data plans”),<sup>14</sup> but a sworn declaration by Worldcall Interconnect CEO Lowell Feldman corroborates that no such “tethering service” exists,<sup>15</sup> and hard evidence proves that Verizon's statements are false: Google's source code repository for the Android operating system shows that AT&T requested that Google disable tethering features Google built into the Asus Nexus 7 (codenamed “deb”)<sup>16</sup> and that AT&T and Verizon requested that Google disable tethering features Google built into the Motorola Nexus 6 (codenamed “shamu”) unless customers pay additional fees to re-enable them.<sup>17</sup> Verizon says the Commission has “acknowledged” that Verizon charges an additional monthly fee for tethering “but has not stated any concern with that practice.”

However, I dispute Verizon's claim that there is no prohibition on application-specific<sup>18</sup> charges

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14 Vaidya Declaration ¶ 4.

15 *Worldcall Interconnect, Inc. v. AT&T Mobility LLC.*, Proceeding No. 16-242, File No. EB-16-MD-003, Reply Declaration of Lowell Feldman at 84 [AT&T and Verizon, for their own internal reasons, will not allow a Hotspot Function from the Nexus 7. But because Google promised an “open” device, it would not make a unique version version for just AT&T or Verizon. So what was the Google/AT&T/Verizon joint solution? They built into the framework of all the Nexus 7 devices a hidden disabling function for the Nexus 7 Hotspot function.]

16 Mike Sabolish. Google's source code repository for Android. <https://android.googlesource.com/device/asus/deb/+f0130356a775005cca71008b26a5ad4a0ca50bdb> (August 12, 2013) [“Default AT&T tethering and MHS [mobile hotspot] modes to off. Per AT&T requirements, disable tethering and MHS for all AT&T MCC/MNC combinations.”]

17 Robert Greenwalt, Rohit Sisodia. Google's source code repository for Android. <https://android.googlesource.com/device/moto/shamu/+7da09784745b9592a1b469d527802a44e8493e6a> (September 19, 2014) [“Enabling hotspot provision app for Verizon Mcc/Mnc”], <https://android.googlesource.com/device/moto/shamu/+111b21fd88a5de971ac6076a37707349ce30e50a> (September 24, 2014) [“Turn tethering APNs on for Sprint and Verizon”], <https://android.googlesource.com/device/moto/shamu/+c1109e92e2765111e4e17c5766fde42a6bd19784> (September 26, 2014) [“Overlay change for ATT MCC/MNC list and replaced Verizon entitlement APP with Common Entitlement APP for Verizon MCC/MNC”]

18 30 FCC Rcd. 5663 note 344 (2015) [“Application-specific network practices include, for example, those applied to traffic that has a particular source or destination, that is generated by a particular application or by an application that belongs to a particular class of applications, that uses a particular application- or transport- layer protocol, or that has

for tethering: Even if Verizon was able to deceive the Commission into believing Verizon has its own “tethering service,” acknowledging conduct and not stating concern with conduct aren't the same as expressly endorsing conduct. The plain language of the C Block Rules,<sup>19</sup> the *2010 Open Internet Order*,<sup>20</sup> the *2012 Order and Consent Decree*,<sup>21</sup> articles consistent with this interpretation published by The New York Times<sup>22</sup> and ZDnet,<sup>23</sup> remarks by FCC Chairman Tom Wheeler,<sup>24</sup> and the *2015 Open Internet Order*<sup>25</sup> contradict Verizon's claim.

16. I admit I quoted an article by Matt Hamblen available on the “third party website”

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- particular characteristics (e.g., the size, sequencing, and/or timing of packets).”]
- 19 47 CFR § 27.16(e) [“No licensee may disable features on handsets it provides to customers ...”]
- 20 25 FCC Rcd. 179543–17944 ¶ 67 (2010) [“To the extent that a content, application, or service provider could avoid being blocked only by paying a fee, charging such a fee would not be permissible under these rules.”]
- 21 27 FCC Rcd. 8940 ¶ 13 (2012), affirming that Verizon may not “explicitly or implicitly request” that applications be made unavailable to customers.
- 22 Brian X. Chen. *F.C.C. Forces Verizon to Allow Android Tethering Apps*. <http://bits.blogs.nytimes.com/2012/07/31/fcc-verizon-tethering/> [“Those customers who still have unlimited data plans are the big winner here.”]
- 23 Steven J. Vaughan-Nichols. *Let my Wi-Fi go: FCC rules Verizon can't charge for Wi-Fi tethering*. <http://www.zdnet.com/article/let-my-wi-fi-go-fcc-rules-verizon-cant-charge-for-wi-fi-tethering/> (July 31, 2012) [“In the case of Verizon, the company started charging users a \$20 per month tethering charge even if they had an “unlimited” plan. Those days are done. You will now be able to freely share your bandwidth as you see fit.... The \$20 fee was always about trying to squeeze the customer for the maximum amount of income with the minimum amount of service.”]
- 24 Prepared Remarks of FCC Chairman Tom Wheeler, 2014 CTIA Show, Las Vegas, NV (September 9, 2014) [“We are very concerned about the possibility that some customers are being singled out for disparate treatment even though they have paid for the capacity that is being throttled. And we are equally concerned that customers may have been led to purchase devices relying on the promise of unlimited usage only to discover, after the device purchase, that they are subject to throttling. I am hard pressed to understand how either practice, much less the two together, could be a reasonable way to manage a network.”]
- 25 30 FCC Rcd. 5700 ¶ 216 (2015) [“If a practice is primarily motivated by such an other justification, such as a practice that permits different levels of network access for similarly situated users based solely on the particular plan to which the user has subscribed, then that practice will not be considered under this exception.”] (Internal citations omitted.)

of Computerworld, a publication of IDG Communications; however, I dispute Verizon's claim that it "cannot admit or deny whether the Complaint accurately and completely quotes" the article. Verizon admits Paragraph 6 of the Complaint "appears to accurately quote" an article available on the Web site of The Wall Street Journal. Verizon denies it presently blocks third-party tethering applications but doesn't deny it had done so in the past.

17. I admit I quoted a statement by Jeffrey Nelson, Verizon's Vice President of Global Communications, in an article by Phil Goldstein available on the "third party website" of Fierce Wireless, a publication of Qwestex LLC. In spite of 47 CFR § 1.724(b), Verizon submits a general denial of the assertions contained in Paragraph 17. Verizon admits that the cited article speaks for itself and doesn't specifically deny that Google made tethering applications unavailable at the request of Verizon.<sup>26</sup>

18. No reply to Paragraph 18 is necessary.

19. Verizon denies it blocked third-party tethering applications, but Google confirmed it made tethering applications unavailable at the request of Verizon and other wireless carriers. Verizon denies that it disables built-in tethering features and charges an additional \$20.00/month to re-enable them and alleges the existence of its own "tethering service" (in connection with "certain data plans"), but a sworn declaration by Worldcall Interconnect CEO Lowell Feldman corroborates that no such "tethering service" exists, and hard evidence proves that Verizon's statements are false: Google's source code repository for the Android operating system shows

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26 Phil Goldstein. *Group claims Verizon's ban of tethering apps violates 700 MHz open access rules*. <http://www.fiercewireless.com/story/group-claims-verizons-ban-tethering-apps-violates-700-mhz-open-access-rules/2011-06-07> ["Jeffrey Nelson, a Verizon spokesman, said the carrier does not block applications in the Android Market and that Google manages the Android Market.... The spokesman for Google said while it is not blocking the app in the Android Market, it is making it unavailable at the request of wireless carriers."]

that AT&T requested that Google disable tethering features Google built into the Asus Nexus 7 (codenamed “deb”) and that AT&T and Verizon requested that Google disable tethering features Google built into the Motorola Nexus 6 (codenamed “shamu”) unless customers pay additional fees to re-enable them. Verizon says the Commission has “acknowledged” that Verizon charges an additional monthly fee for tethering “but has not stated any concern with that practice.”

However, I dispute Verizon's claim that there is no prohibition on application-specific charges for tethering: Even if Verizon was able to deceive the Commission into believing Verizon has its own “tethering service,” acknowledging conduct and not stating concern with conduct aren't the same as expressly endorsing conduct. The plain language of the C Block Rules, the *2010 Open Internet Order*, the *2012 Order and Consent Decree*, articles consistent with this interpretation published by The New York Times and ZDnet, remarks by FCC Chairman Tom Wheeler, and the *2015 Open Internet Order* contradict Verizon's claim. See *supra* ¶ 15 for citations.

**B. The 2010 and 2015 Open Internet Orders**

20. Verizon doesn't deny that in 2010, the Commission recognized that carriers have the incentive and ability to limit openness and have done so.

21. No reply to Paragraph 21 is necessary.

22. No reply to Paragraph 22 is necessary.

23. No reply to Paragraph 23 is necessary.

24. No reply to Paragraph 24 is necessary.

**C. Device Providers Support LTE Band 13 for Compatibility with the Verizon Wireless Network**

25. I admit not all devices are manufactured to be compatible with the Verizon Wireless network but object to Verizon's misleading and deceptive statements. (See also



Paulrajan Declaration ¶ 5.) I did NOT assert device providers don't make devices that don't support LTE Band 13; however, I DID assert device providers support LTE Band 13 for compatibility with the Verizon Wireless network. For example, I did NOT assert the Wi-Fi-only model of the Microsoft Surface 3 supports LTE at all; however, I DID assert the LTE model of the Microsoft Surface 3 (sold by AT&T, T-Mobile, Verizon, Microsoft, and independent retailers) supports LTE Band 13 and is compatible with the Verizon Wireless network. Similarly, I did NOT assert the Apple iPhone SE, Model A1723 supports LTE Band 13; however, I DID assert the Apple iPhone SE, Model A1662 supports LTE Band 13 and is compatible with the Verizon Wireless network. See Answer, Exhibit 16 (indicating that Model A1662, which is sold by AT&T, T-Mobile, Verizon, Apple, and independent retailers, does support LTE Band 13).

**D. Verizon Dominates Device Sales for Over 141 Million Subscriber Connections**

26. I admit I cited “third party articles” published by Fierce Wireless, All Things Digital, Consumer Intelligence Research Partners, and The Wall Street Journal. I dispute Verizon's claim that it “lacks knowledge or information sufficient to form a belief as to” its own device sales. Otherwise, I agree with Verizon that the articles speak for themselves: “Of the carriers, Verizon gets the biggest proportion of [device] sales—57 percent—from its own stores.”<sup>27</sup>

27. Verizon claims it doesn't “block” third-party devices, impose any “impermissible” discriminatory pricing on bringing your own device, or make misleading or deceptive statements about third-party devices, but as usual, neglects to substantiate its allegations.

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27 Ina Fried. *Apple Store a Big Source of Cellphone Sales; Best Buy Is Key for Carriers*. <http://allthingsd.com/20131125/apple-store-a-big-source-of-cellphone-sales-best-buy-is-key-for-carriers/>

**E. Verizon Claims Its “Certification” Process Only Tests Network Connectivity**

28. Verizon denies it discriminates against third-party “devices, software, or applications” and mentions “sound network management practices” (Paulrajan Declaration ¶ 6) but neglects to quote specific text for any of its practices or provide evidence that it has reasonably applied them, as required by 47 CFR § 27.16(f). I object to Verizon's accusation that Paragraph 28 mischaracterizes what consumer groups said about Verizon's “certification” process but otherwise agree with Verizon that the Washington Post article speaks for itself.<sup>28</sup>

29. I admit I cited a quotation by Dewayne Hendricks of Tetherless Access in an article by Bryan Gardiner available on the “third party website” of Wired magazine.<sup>29</sup>

30. I admit I cited an article by Marguerite Reardon available on the “third party website” of CNET, a publication of CBS Interactive;<sup>30</sup> however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the article.

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28 Kim Hart. *Verizon To Open Its Wireless Network*. <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/27/AR2007112701077.html> [But some consumer groups, including Public Knowledge and Media Access Project, say it may be too limited to bring real change. Through its testing process, Verizon will still ultimately decide which phones and applications can work on its network, they say, and customers could end up paying more to use outside products. “When more details are out, we'll discover what all the 'gotchas' are,” said Amol Sarva, chief executive of Txtbl, a start-up that hopes to provide mobile e-mail service to cellphone users.]

29 Bryan Gardiner. *FCC Auction Ensures Open Access — If in Name Only*. [https://web.archive.org/web/20100818092720/http://www.wired.com/techbiz/it/news/2008/02/open\\_access](https://web.archive.org/web/20100818092720/http://www.wired.com/techbiz/it/news/2008/02/open_access) [“If you look at the final rules that the FCC put out there, whoever wins the spectrum basically defines what open access means,” said Hendricks. If, for instance, a carrier wanted to argue that a particular device or application poses a danger to the network -- an argument carriers have frequently made before -- it could ban that device or service from the network.]

30 Marguerite Reardon. *Carriers keeping hands on the reins*. <http://www.cnet.com/news/carriers-keeping-hands-on-the-reins/> (April 5, 2008) [“Under this new model, Verizon still maintains control of which devices get on the network. This is completely different from how the traditional Internet operates. For example, Comcast and Verizon's DSL business do not certify laptops or any other Internet-enabled devices that connect to their broadband networks.”]

Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal.

31. I admit I quoted a statement by Verizon Wireless CEO Lowell McAdam in an article by Rob Pegoraro available on the “third party website” of The Washington Post; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Verizon doesn't deny its CEO said Verizon's certification process would “only be testing network connectivity.”<sup>31</sup> Verizon mentions “sound network management practices” (Paulrajan Declaration ¶ 6) but neglects to quote specific text for any of its practices or provide evidence that it has reasonable applied them, as required by 47 CFR § 27.16(f). Verizon insists it “welcomes third party devices (and software and applications), as both Verizon and its customers benefit when more devices (and software and applications) can be used on the network”; however, Verizon benefits more by compelling customers to purchase devices preloaded with Verizon-backed applications<sup>32</sup> instead of third-party devices not preloaded with Verizon-backed applications and by blocking edge providers from preloading applications that compete against Verizon-backed applications.

32. I admit I quoted an article by Amir Efrati and Anton Troianovski available on the

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31 Rob Pegoraro. *Verizon Wireless To Open Itself Up*. [http://voices.washingtonpost.com/fasterforward/2007/11/verizon\\_wireless\\_to\\_open\\_itself\\_up/](http://voices.washingtonpost.com/fasterforward/2007/11/verizon_wireless_to_open_itself_up/) [At a teleconference yesterday morning, Verizon Wireless CEO Lowell McAdam and other executives repeatedly said the company's compatibility tests would focus only on basic technical standards, would cost little to run and would not be any sort of ordeal. “We do not expect this will be a difficult or lengthy process, since we will only be testing network connectivity,” said McAdam.]

32 Garrett Sloane. *Verizon Offered to Install Marketers' Apps Directly on Subscribers' Phones*. <http://adage.com/article/digital/verizon-selling-brands-app-installs-direct-phones/305462/> (August 16, 2016) [“Verizon was seeking between \$1 and \$2 for each device affected, executives said.”]

“third party website” of The Wall Street Journal; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the same Web site of The Wall Street Journal. Verizon doesn't deny it backed Isis Wallet. Contrary to Verizon's distortions, I did NOT assert Verizon must preload particular applications (or sell particular devices preloaded with particular applications); however, I DID assert the Commission's rules prohibit Verizon from interfering with *edge providers' choice* to preload particular applications (*e.g.*, Google Wallet) or their choice to not preload particular applications (*e.g.*, Isis Wallet).<sup>33</sup> Section 27.16(e) of the Commission's rules states, “No licensee may disable features on handsets it provides to customers,” but Verizon believes it can circumvent this rule by explicitly or implicitly requesting that an edge provider disable features *before* Verizon will provide handsets to customers. However, the *700 MHz Second Report and Order* required C Block licensees to allow “customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice”<sup>34</sup> to foster “greater balance between device manufacturers and wireless service providers,”<sup>35</sup> and the *2012 Order and Consent Decree* affirms Verizon may not “explicitly or implicitly request” that applications be made unavailable to customers.<sup>36</sup> Verizon insists it didn't “block” Google Wallet,<sup>37</sup> but as Verizon admits, the Wall Street Journal article speaks for itself:

Google Inc. said it would bow to a demand by Verizon Wireless, the nation's

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33 Cf. 30 FCC Rcd. 5661–5662 ¶ 139 (2015) [“It is therefore critical that consumers' decisions, rather than those of service providers, remain the driving force behind the development of the Internet.”]

34 22 FCC Rcd. 15361 ¶ 195 (2007)

35 *Id.* at 15363 ¶ 201.

36 27 FCC Rcd. 8940 ¶ 13 (2012)

37 Dennis Declaration ¶ 10.

largest cellphone operator, and withhold Google's mobile payment technology from devices sold by the carrier....

Google claims Verizon is blocking its Google Wallet mobile payments app from being pre-loaded on its newest smartphone or being downloaded by consumers themselves.<sup>38</sup>

33. I admit I quoted articles published on the “third party websites” of Bloomberg and 9to5Google, a publication of 9to5; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the articles. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Verizon not only doesn't deny but also admits again it was continuing “commercial discussions” with Google.<sup>39</sup> Verizon insists the articles are not accurate and denies it blocked Google Wallet, but as usual, neglects to substantiate its allegations. Otherwise, I agree with Verizon that the articles speak for themselves:

“It’s blocking a competitor’s product from getting to the market,” Sterling [founder of the consulting firm Sterling Market Intelligence] said in an e-mail. “I don’t think the security concerns are genuine.”

Sterling points to Sprint Nextel Corp., which doesn’t have a mobile payment product and sells Google’s Nexus S phones with NFC chips for Google Wallet.

“Sprint obviously didn’t express the same concern about security in allowing Google Wallet on the Nexus S, and so far there don’t seem to be any reports that indicate security has been a problem for users or the carrier,” said Sterling.<sup>40</sup>

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38 Amir Efrati, Anton Troianovski. *Verizon Blocks Google Wallet on New Smartphones*. <http://www.wsj.com/articles/SB10001424052970204770404577081610232043208> (December 11, 2011)

39 Seth Weintraub. *Verizon issues new statement on Google Wallet, “continuing discussions with Google”* <http://9to5google.com/2011/12/06/verizon-issues-new-statement-on-google-wallet-may-cave-to-pressure/> [Then to make the obvious more obvious, Verizon slips up in the final sentence. Right after saying the Wallet blockade is a technical issue (“needs to be integrated into a new, secure and proprietary hardware element”), they say that Verizon and Google are continuing COMMERCIAL (not technical) discussions about the app.]

40 Scott Moritz. *Verizon Wireless Blocks Rival Google Wallet, Citing Security*. <https://www.bloomberg.com/news/articles/2011-12-06/verizon-wireless-blocks-google-s->

34. I admit I cited an article by Kellen Barranger available on the “third party website” of Droid Life, a publication of DRD Life Inc., that quotes a Verizon letter; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Verizon insists “the quoted excerpts contain inaccuracies” and denies it blocked Google Wallet, but as usual, neglects to substantiate its allegations. Verizon doesn't deny customers' “inability to access Google Wallet”<sup>41</sup> for over 52 weeks, even though Verizon's “straightforward process” for “certification” allegedly only tests network connectivity and “generally takes between four and six weeks.” Verizon doesn't deny it didn't specify the “straightforward process” it alleged existed.

35. I admit I cited an article by Kellen Barranger available on the “third party website” of Droid Life, a publication of DRD Life Inc.; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Verizon denies it “impermissibly blocked” Google Wallet and insists there were “technical issues associated with using it,” but as usual, neglects to substantiate its allegations.

**F. Verizon Claims Its “Certification” Process Generally Takes Between Four and Six Weeks**

36. Verizon admits it claimed that the typical amount of time to approve a device should be “weeks rather than months”<sup>42</sup> and that its certification process “generally takes

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[mobile-payment-system-on-security-concern](#)

41 Answer, Exhibit 5.

42 Verizon Wireless. *FAQ: Open Network Certification*.

<https://opennetwork.verizonwireless.com/content/open-development/faq.html>

between four and six weeks.”<sup>43</sup> Verizon insists it “does not use the certification process to hold up or unreasonably delay allowing third party devices onto its network” and mentions four factors that could cause “testing” to take longer;<sup>44</sup> however, Verizon neglects to provide evidence that it has reasonably applied its “certification” process. For example, Verizon neglects to provide evidence that the four factors applied when Verizon blocked third-party Apple iPhone 6 and iPhone 6 Plus devices for 47 weeks (even though AT&T, T-Mobile, and other carriers sold the same A1549 and A1522 models Verizon sold) or when Verizon blocked third-party Motorola Nexus 6 smartphones for 29 weeks (even though Google, Motorola, AT&T, Sprint, T-Mobile, U.S. Cellular, and independent retailers sold the same XT1103 models Verizon sold). As discussed in more detail below, I dispute Verizon's denial that it blocked the Asus Nexus 7 for over 22 weeks.

### **III. VERIZON INTERFERES WITH CUSTOMERS' ABILITY TO USE THE DEVICES OF THEIR CHOICE**

37. I admit I quoted the definition of subscriber identity module (SIM) available on the “third party website” of the European Telecommunications Standards Institute, the body that specified the SIM standard.

38. Verizon expresses its belief about the primary purpose of a SIM; the definition by the European Telecommunications Standards Institute I cited in the paragraph above speaks for itself.<sup>45</sup> I admit there is no explicit Commission regulation of SIM cards similar to those of

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(November 27, 2015) [“What will be the typical amount of time to approve a device? We expect the typical lab time to be weeks rather than months.”]

43 Debi Lewis. *Statement on Verizon Wireless Device Certification*. <https://www.verizonwireless.com/news/article/2013/09/verizon-wireless-device-certification-statement.html>

44 Andresen Declaration ¶ 4–5.

45 ETSI. SIM. <http://www.etsi.org/technologies-clusters/technologies/smart-cards/sim> (November 17, 2015) [“The SIM used in Digital Cellular Telecommunications Systems like

CableCARDS but deny Verizon's claim that both the C Block Rules and the Open Internet Rules “recognize” a providers' “rights” to limit provisioning of SIMs.<sup>46</sup> Verizon mentions “reasonable technical requirements for accessing its network” and “requirements for SIM cards that enable attachment of devices to the network in a secure way” but neglects to quote specific text from the C Block Rules, the Open Internet Rules, or Verizon's requirements or provide evidence that Verizon has reasonably applied its requirements, as required by 47 CFR § 27.16(f).

39. Verizon doesn't deny AT&T, T-Mobile, and many other carriers worldwide that collectively serve billions of customers<sup>47</sup> provision SIMs separately from devices. In every country in which Apple has retail stores and most of the developed world,<sup>48</sup> except the United States, Apple directly sells iPhones through its Web site “SIM-free” only. In the United States, Apple directly sells iPhones SIM-free (in addition to indirectly selling iPhones through carriers), but only after weeks of delay during which customers must bundle with service from one of the four national carriers.<sup>49</sup> Relying on unclearly-specified “reasons stated above,” Verizon denies

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3G or GSM is the entity that contains the identity of the subscriber. When the SIM is placed in a terminal or handset, users can register onto the network. The primary function of the SIM is to authenticate the validity of a terminal when accessing the network. It also provides a means to authenticate the user and may store other subscriber-related information or applications.”]

46 Answer, Legal Analysis at 6.

47 GSMA. *Market Data Summary*.

[https://web.archive.org/web/20091003071227/http://www.gsmworld.com/newsroom/market-data/market\\_data\\_summary.htm](https://web.archive.org/web/20091003071227/http://www.gsmworld.com/newsroom/market-data/market_data_summary.htm) (October 3, 2009)

48 Apple. Choose your country or region. <https://www.apple.com/choose-your-country/> [Australia, Austria, Belgium, Brazil, Canada, China, the Czech Republic, Denmark, Finland, France, Germany, Hong Kong, Hungary, Ireland, Italy, Japan, Luxembourg, Malaysia, Mexico, the Netherlands, New Zealand, Norway, the Philippines, Poland, Portugal, Russia, Singapore, South Korea, Spain, Sweden, Switzerland, Taiwan, Thailand, Turkey, the United Arab Emirates, the United Kingdom.]

49 Richard Padilla. *Unlocked, SIM-Free iPhone 6 and 6 Plus Models Now Available in U.S. with 3-5 Day Shipping*. <http://www.macrumors.com/2015/01/06/sim-free-iphone-6-6-plus-now-available/>



that a customer can insert a Verizon SIM card, for example, into a device not certified by Verizon (but otherwise certified by the Commission's Office of Engineering and Technology) and successfully obtain wireless service but admits “that may work in some instances.” Verizon insists a device must be “certified” by Verizon in order to “ensure proper functionality”<sup>50</sup> but neglects to provide evidence that it has reasonably applied its “certification” process. I admit that whether a device is compatible with a carrier's network and whether a carrier elects to certify a device is compatible with its network are separate questions.

40. Verizon admits it blocks customers from activating SIMs for devices it doesn't whitelist. Verizon mentions “sound network management practices” (Paulrajan Declaration ¶ 6) but neglects to quote specific text for any of its practices or provide evidence that it has reasonably applied them, as required by 47 CFR § 27.16(f). In every country in which Apple has retail stores and most of the developed world, except the United States, Apple directly sells iPhones through its Web site “SIM-free” only. Even though AT&T, T-Mobile, and many other carriers worldwide that collectively serve billions of customers provision SIMs separately from devices, Verizon insists it must block customers from activating SIMs for devices it doesn't whitelist in order to “protect its network and customers.” See *supra* ¶ 39 for citations.

41. Verizon doesn't deny that before February 22, 2016 (a month after I notified Verizon that I intended to file a formal complaint), even if a device was whitelisted by Verizon, the Bring Your Own Device page didn't let customers order SIM cards online. I reiterate that AT&T,<sup>51</sup> T-Mobile,<sup>52</sup> and many other carriers worldwide let customers order SIM cards for

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50 See Paulrajan Declaration ¶ 8 and Friedman Declaration ¶ 6.

51 AT&T. *SIM Cards*. <https://www.att.com/shop/wireless/devices/simcards.html> (March 20, 2016)

52 T-Mobile. *SIM Card Starter Kit*. <https://www.t-mobile.com/cell-phones/t-mobile-3-in-1-sim-starter-kit.html> (March 20, 2016)

prepaid and postpaid service from their online stores without entering a device identifier to check against a whitelist.

42. I dispute Verizon's denial that it is “impermissibly” inhibiting edge providers from offering unlocked devices compatible with its network directly to customers. For example, see the Microsoft Surface 3<sup>53</sup> and Moto G4.<sup>54</sup> Additionally, Samsung Galaxy S7 and Galaxy S7 edge smartphones sold by Verizon are the same hardware (FCC IDs: A3LSMG930US, A3LSMG935US) sold by other carriers,<sup>55</sup> and HTC 10 smartphones sold by Verizon are the same hardware (FCC ID: NM82PS6500) sold by AT&T, T-Mobile, and HTC (unlocked),<sup>56</sup> but network support is disabled in firmware for devices sold by competing sources.<sup>57</sup> Contrary to Verizon's distortions, I do NOT assert edge providers should offer devices without certifying them; however, I DO assert the Commission has explicitly recognized manipulative whitelisting<sup>58</sup> and the importance of ensuring unaffiliated vendors can build compatible devices without first

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53 Complaint, Section III.D.

54 jonpablo. *Verizon tells me they DO NOT recognize Moto G4*. <https://forums.lenovo.com/t5/Moto-G4-Moto-G4-Plus-Moto-G4/Verizon-tells-me-they-DO-NOT-recognize-Moto-G4-UPDATED-7-13-2016/td-p/3369881> (July 12, 2016)

55 Rich Brome. *Samsung Galaxy S7 Clears FCC with Single Approval*. <http://www.phonescoop.com/articles/article.php?a=17201> (February 4, 2016) [“The common FCC ID means a very standard hardware design across all carrier variants. FCC documents indicate that the carrier variants will be sold in a state limited to that carrier's network bands, presumably via low-level firmware.”]

56 Mo Versi (VP, Product Management at HTC). Tweet on March 9, 2016. <https://twitter.com/moversi/status/722195818313179136> [mspector22: “Why won't the unlocked HTC 10 work on Verizon? It supports all the right bands (850, 1900 MHz for CDMA and 2,4, 13 for LTE)” moversi: “Yes, unfortunately it won't. I can't provide specifics, but you can purchase directly from the carrier soon!”]

57 Michael Crider. *The GSM-LTE Unlocked Version of the HTC 10 Will Work On Verizon After A Simple Radio Flash*. <http://www.androidpolice.com/2016/05/11/the-gsm-lte-unlocked-version-of-the-htc-10-will-work-on-verizon-after-a-simple-radio-flash/>

58 22 FCC Rcd. 15372 ¶ 224 (2007) [We believe that standards transparency should greatly reduce the potential for manipulative “white-listing,” i.e., providers creating complex and vague qualification and approval processes for third parties before approval to attach devices or run applications on the network.]

obtaining approval from service providers.<sup>59</sup> For example, Apple—which has its own retail stores and is the most valuable company and brand in the world—has enough leverage to do its Verizon certification tests itself,<sup>60</sup> offer unlocked devices compatible with the Verizon Wireless network directly to customers (and at the same time, sell devices inside Verizon's retail operations), and preload Apple Pay on its devices,<sup>61</sup> but Samsung—the largest mobile phone manufacturer in the world—doesn't. Verizon pretended it was “evaluating” Samsung Pay to delay competition against Verizon-backed Android Pay,<sup>62</sup> and Verizon continues to block Samsung from preloading

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59 Cf. 31 FCC Rcd. 1560 ¶ 28 (2016) [“Third, unaffiliated vendors must be able to build competitive navigation devices, including applications, without first obtaining approval from MVPDs or organizations they control. Senators Markey and Blumenthal found that MVPDs take in approximately \$19.5 billion per year in set-top box lease fees, so MVPDs have a strong financial incentive to use an approval process to prevent development of a competitive commercial market and continue to require almost all of their subscribers to lease set-top boxes.”], 1578 ¶ 72 [“We do not believe that each MVPD should have its own testing and certification processes.”]

60 Walt Mossberg. Nilay Patel. *Ctrl-Walt-Delete: Walt and Nilay on the Edge* at 29 minutes, 5 seconds. <http://www.theverge.com/2016/3/10/11193170/ctrl-walt-delete-samsung-galaxy-s7-edge> [There's no Verizon crap on the iPhone. None! In fact, years ago, I went to a Verizon test lab ... I went and visited it, and I looked around, and they were very proud. They were showing me the test lab. There were a bunch of phones lying around. I saw Motorola, Samsung, BlackBerry, whatever, and I said to them, “How come there are no iPhones lying around?” And they fumbled around and said, “Oh, well, Apple does its Verizon certification tests itself in its own lab ... but we have an engineer there!” And Apple just doesn't do that, doesn't let its phones be a sales tool for the carriers, and Samsung feels like it has to....]

61 Jason Del Rey. *Apple Introduces Apple Pay to Try to Replace Your Wallet*. <https://recode.net/2014/09/09/apple-introduces-apple-pay-to-try-to-replace-your-wallet/> [“Shoppers in the U.S. have so far failed to widely adopt mobile payment schemes like Google Wallet or ones derived from the wireless carriers themselves, but industry analysts and executives believe Apple can change that. One key difference here is Apple makes both its phones and its operating system, so wireless carriers can't block customers from using Apple's mobile payment technology as they did with Google. Apple's mobile payment system will be fully integrated in its phones, and if a carrier wanted to block the technology, it would have to stop selling the new iPhones altogether. That's not going to happen.”]

62 Sean O'Kane. *Samsung Pay launches in the United States*. <http://www.theverge.com/2015/9/28/9408749/samsung-pay-united-states-launch> [“Almost all of the major carriers do already support it, though. The only holdout is Verizon, which continues to say that it is “in the process of evaluating Samsung Pay.”]

Samsung Pay on its devices.<sup>63</sup> Verizon mentions “sound network management practices” but neglects to quote specific text for any of its practices or provide evidence that it has reasonably applied them, as required by 47 CFR § 27.16(f). Verizon distorts the assertions in the Complaint: I did NOT assert Verizon must preload particular applications (or sell particular devices preloaded with particular applications); however, I DID assert the Commission's rules prohibit Verizon from interfering with *edge providers' choice* to preload particular applications (*e.g.*, those that compete against Verizon-backed applications) or their choice to not preload particular applications (*e.g.*, Verizon-backed applications). Section 27.16(e) of the Commission's rules states, “No licensee may disable features on handsets it provides to customers,” but Verizon believes it can circumvent this rule by explicitly or implicitly requesting that an edge provider disable features *before* Verizon will provide handsets to customers. However, the *700 MHz Second Report and Order* required C Block licensees to allow “customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice” to foster “greater balance between device manufacturers and wireless service providers,” and the *2012 Order and Consent Decree* affirms Verizon may not “explicitly or implicitly request” that applications be made unavailable to customers. See *supra* ¶ 32 for citations. Verizon vacuously says it doesn't block device suppliers from preloading the applications of their choice on devices other carriers provide to customers,<sup>64</sup> but Verizon doesn't deny it blocks device suppliers from preloading the applications of their choice on devices Verizon provides to customers. Also, I dispute Verizon's claim that it does not “block” edge

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63 Walt Mossberg. *Mossberg: Samsung's New Galaxy S7 Phones Are Beautiful*. <https://recode.net/2016/03/08/mossberg-samsungs-new-galaxy-s7-phones-are-beautiful/> [“Samsung says Verizon barred including Samsung's browser and Samsung Pay out of the box.”]

64 Dennis Declaration ¶ 3.

providers from offering applications as separate downloads. See the Complaint, Sections VI.C, VI.E, VI.F.

**A. Verizon Blocked Asus Nexus 7 Tablets for 22 Weeks**

43. Verizon doesn't deny it blocked customers from activating SIM cards for the Asus Nexus 7<sup>65</sup> and doesn't deny it stated the tablet is “not part of our line up & can't be activated” (by Verizon).<sup>66</sup> Verizon denies it “impermissibly” blocked or delayed certification of the Nexus 7 and claims Asus initially submitted the Nexus 7 to Verizon in August 2013 but neglects to provide evidence substantiating this claim. Verizon alleges that because of a vague “systems issue” it uncovered, Google and Asus chose to release KitKat (version 4.4 of the Android operating system) before submitting the Nexus 7 to Verizon's “certification” process again; however, Verizon neglects to specify the “systems issue” it alleged existed or provide evidence substantiating its allegations.

44. I admit I quoted Jeff Jarvis, professor and director of the Tow-Knight Center for Entrepreneurial Journalism at the City University of New York's Graduate School of Journalism.

45. I admit I quoted an article by David Ruddock available on the “third party website” of Android Police, a publication of Illogical Robot LLC. Verizon doesn't deny it neglected to specify the “systems issue” it alleged existed or provide evidence that this alleged “systems issue” harmed the safety and security of its network. To the extent the Complaint wasn't already clear, I make more explicit in this Reply that I received a used Nexus 7 as a gift in August 2014 but gave up on using it on the Verizon network and regifted it after Verizon blocked

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65 Jon Brodtkin. *Verizon blocks Nexus 7 and will probably get away with it.* <http://arstechnica.com/tech-policy/2013/09/verizon-blocks-nexus-7-and-will-probably-get-away-with-it/>

66 Jeff Jarvis. *Verizon, caught red-handed.* <https://buzzmachine.com/2013/09/17/verizon-caught-red-handed/>

me from activating a SIM card for it.<sup>67</sup>

46. Verizon admits that on November 5, 2013, while it was still “certifying” the Asus Nexus 7, the carrier launched its own line of tablets by starting to sell the similarly-sized Verizon Ellipsis 7. Verizon insists it “welcomes” third-party devices, as “both Verizon and its customers benefit when third party devices can be used on the Verizon network”;<sup>68</sup> however, Verizon benefits more by compelling customers to purchase the Verizon Ellipsis 7 (preloaded with Verizon-backed applications) instead of third-party devices (not preloaded with Verizon-backed applications). I admit I quoted an article by Ricardo Bilton available on the “third party website” of VentureBeat; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Verizon mentions its “published technical standards” but neglects to quote specific text from them or provide evidence that it has reasonably applied them, as required by 47 CFR § 27.16(f). Verizon alleges that because of a vague “systems issue” it uncovered, Google and Asus chose to release KitKat (version 4.4 of the Android operating system) before submitting the Nexus 7 to Verizon's “certification” process again; however, Verizon neglects to specify the “systems issue” it alleged existed or provide evidence substantiating its allegations. To the extent

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67 Shawn De Cesari. *PSA: CDMA Carriers Probably Won't Activate Your Nexus 6 Unless It Was Purchased From Google Play Or That Carrier (And What You Can Do About It)*. <http://www.androidpolice.com/2014/11/22/psa-cdma-carriers-probably-wont-activate-your-nexus-6-unless-it-was-purchased-from-google-play-or-that-carrier-and-what-you-can-do-about-it/> [“Verizon did the exact same thing with the 2013 Nexus 7 LTE. Once it finally got around to whitelisting the Nexus 7's IMEI numbers five months after launch, they only did so for devices sold from Google Play and Verizon. If you bought from T-Mobile, you weren't going to activate it on Verizon through normal channels.”]

68 Paulrajan Declaration ¶ 3.

Verizon's standards are just “industry standards with a few Verizon supplements,”<sup>69</sup> as Verizon claimed, edge providers can certify that devices “comply with Verizon's published technical standards or otherwise are compatible with Verizon's network.”

47. I admit I quoted an article by Artem Russakovski available on the “third party website” of Android Police, a publication of Illogical Robot LLC; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Verizon doesn't deny that on November 14, 2013, Google released Android KitKat for the Wi-Fi + Cellular Nexus 7.<sup>70</sup>

48. Verizon doesn't deny that on February 13, 2014 (thirteen weeks after Google released KitKat, twenty-two weeks after Google started selling the Wi-Fi + Cellular Nexus 7, and twenty-nine weeks after Google announced the tablet), Verizon finally “certified” devices sold by Google but not the same models sold by T-Mobile.<sup>71</sup>

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69 Matt Buchanan. *Verizon's Open Door Policy: What It Actually Means*. <http://gizmodo.com/369961/verizons-open-door-policy-what-it-actually-means> (March 20, 2008) [Developers can build devices and applications that run on Verizon's network without going through most of Verizon's red tape. As David McCarley, executive director of technology, said, “Anything that can take advantage of an IP address is in play.” The specs for open devices are basically just industry standards with a few “Verizon supplements.”]

70 Artem Russakovski. *Android 4.4 KitKat Factory Images And Binaries Are Up For Nexus 4, All Variants Of Nexus 7 (2012 And 2013), And Nexus 10*. <http://www.androidpolice.com/2013/11/14/android-4-4-kitkat-factory-images-and-binaries-are-up-for-nexus-4-all-variants-of-nexus-7-2012-and-2013-and-nexus-10/>

71 Shawn De Cesari. *PSA: CDMA Carriers Probably Won't Activate Your Nexus 6 Unless It Was Purchased From Google Play Or That Carrier (And What You Can Do About It)*. <http://www.androidpolice.com/2014/11/22/psa-cdma-carriers-probably-wont-activate-your-nexus-6-unless-it-was-purchased-from-google-play-or-that-carrier-and-what-you-can-do-about-it/> [“Verizon did the exact same thing with the 2013 Nexus 7 LTE. Once it finally got around to whitelisting the Nexus 7's IMEI numbers five months after launch, they only did so for devices sold from Google Play and Verizon. If you bought from T-Mobile, you weren't going to activate it on Verizon through normal channels.”]

**B. Verizon Blocked Third-Party Apple iPhone 6 and iPhone 6 Plus Devices for 47 Weeks**

49. Verizon says it “initially” did not receive the IMEI ranges for third-party Apple iPhone 6 and iPhone 6 Plus devices,<sup>72</sup> but Verizon neglects to specify when it did receive them or explain why it took until August 13, 2015 to whitelist third-party devices, even though customers sought approval to use them at least as early as September 22, 2014.

50. Verizon denies it “impermissibly” blocked customers from activating new SIM cards for third-party iPhone 6 and iPhone 6 Plus devices and says that Apple “initially” did not provide IMEI ranges to Verizon and that Verizon “worked with Apple” to obtain them;<sup>73</sup> however, Verizon doesn't say when it initially “worked with Apple,” doesn't say when it received the IMEI ranges, and doesn't explain why it took until August 13, 2015 to whitelist third-party devices, even though customers sought approval to use them at least as early as September 22, 2014. Verizon insists it “welcomes” third-party devices, as “both Verizon and its customers benefit when third party devices can be used on the Verizon network”;<sup>74</sup> however, Verizon can lock customers into long-term equipment installment plans/contracts and get more equipment revenue for itself by blocking (or delaying “certification” of) third-party devices. As discussed in the reply to Paragraph 122 below, contrary to Verizon's claims, the iPhone 5s (Model A1453), iPhone 5c (Model A1456), and iPhone 5 (Model A1429) sold by other carriers, for example, NorthwestCell (an LTE in Rural America partner with Verizon), support code division multiple access (CDMA), support LTE Band 13, and are compatible with the Verizon Wireless network. Verizon doesn't deny it told customers switching from other carriers to purchase new iPhones

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<sup>72</sup> Vaidya Declaration ¶ 3.

<sup>73</sup> *Id.*

<sup>74</sup> Paulrajan Declaration ¶ 3.



from Verizon instead of using their existing iPhones<sup>75</sup> and admits “the Verizon website therefore was updated.” As discussed more fully below, I dispute Verizon's denial that it imposed discriminatory pricing on customers who used third-party devices with existing SIMs.<sup>76</sup>

51. Verizon doesn't deny that on August 13, 2015 (almost 47 weeks after release),<sup>77</sup> Verizon finally “certified” iPhone 6 and iPhone 6 Plus devices sold by competing sources.<sup>78</sup> Verizon says it received the necessary IMEI ranges but neglects to specify when it received them or explain why it took until August 13, 2015 to whitelist third-party devices, even though customers sought approval to use them at least as early as September 22, 2014.

### **C. Verizon Blocked Third-Party Motorola Nexus 6 Smartphones for 29 Weeks**

52. Contrary to Verizon's claims, I clearly asserted that I personally purchased devices other than the Motorola Nexus 6 from sources other than Verizon.<sup>79</sup> For example, the Apple iPhone 6 I purchased has been recognized as a “non-VZW” device by the My Verizon site for

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75 memarkaz. *No Verizon Month to Month Discount With non-Verizon iPhone 6???* <http://www.howardforums.com/showthread.php/1851974-No-Verizon-Month-to-Month-Discount-With-non-Verizon-iPhone-6> (December 1, 2014) [“I was advised to sell my 2 phones and buy Verizon hardware as their hardware supports all features including month 2 month.”]

76 mattaz02. *not only is the iPhone 6 unlocked, but the t-mobile phones work on verizon!* <https://discussions.apple.com/message/27768232#27768232> (March 5, 2015) [“Now since I brought my own phones I should be receiving the \$25 off per line on the more everything plan, but Verizon can't seem to get it to work in their system. They are saying that the codes they are using are not being accepted. If I put the sim card from one of the 6's into the 5c(Verizon phone) then they are able to add the discount, but once I put that sim card back into the iPhone6 the discount goes away since it now shows up as a non VZW device.”]

77 fanoffanless. *PSA: Verizon just whitelisted the iPhone 6 and 6 Plus from different carriers. iPads from different carriers are still not on the whitelist.* [https://www.reddit.com/r/verizon/comments/3gw0kw/psa\\_verizon\\_just\\_whitelisted\\_the\\_iphone\\_6\\_and\\_6/](https://www.reddit.com/r/verizon/comments/3gw0kw/psa_verizon_just_whitelisted_the_iphone_6_and_6/) (August 13, 2015)

78 mrredcat43. *That day has finally arrived!!!* [https://www.reddit.com/r/verizon/comments/3h3k5t/that\\_day\\_has\\_finally\\_arrived/](https://www.reddit.com/r/verizon/comments/3h3k5t/that_day_has_finally_arrived/) (August 15, 2015)

79 Complaint ¶ 270.

over 14 months. (See the exhibits.) I dispute Verizon's denial that the Nexus 6, when launched, was compatible with the wireless networks of AT&T, Sprint, T-Mobile, U.S. Cellular, Verizon, and other carriers: Verizon mentions “software specific to Verizon” but neglects to specify this software (by referencing Google's source code repository, for example). Verizon alleges Google was unable to provide a means of delivering “that software” to devices sold by Google, Motorola, other carriers, and independent retailers, even though in an interview on October 22, 2014, Dave Burke, VP of engineering for the Android platform and Nexus devices at Google, said otherwise.<sup>80</sup> Even earlier, Google clearly had a way to deliver “Verizon Wireless software” to devices sold by Google, other carriers, and independent retailers: coincidentally, Google was able to deliver such software to third-party Asus Nexus 7 tablets after Verizon started to sell the tablet (and accessories) on February 13, 2014.<sup>81</sup> Verizon insists Nexus 6 devices sold by Google, Motorola, other carriers, and independent retailers “could not be certified as meeting the technical standards necessary for the management and protection of the Verizon network” because for example, Verizon could not “ensure that Voice over LTE worked”; however, even though VoLTE didn't work on Verizon's own Droid Turbo smartphone when Verizon launched it in October 2014,<sup>82</sup> apparently, the Droid Turbo could be certified by Verizon as meeting its own

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80 Ron Amadeo. *Transcript: Ars talks to Android execs about Lollipop and the Nexuses*. <http://arstechnica.com/gadgets/2014/10/transcript-ars-talks-to-android-execs-about-lollipop-and-the-nexuses/> [“What happens now is when you've got a Verizon SIM in the device, it actually installs Verizon apps as part of the setup flow, and then you can remove them if you want as part of the Play Infrastructure. And Verizon can update it.”]

81 Jerry Hildenbrand. *Nexus 7 LTE getting Verizon compatibility update*. <https://www.androidcentral.com/nexus-7-lte-getting-verizon-compatibility-update> (February 12, 2014) [Your LTE-equipped Nexus 7 should be seeing an update today that adds “Full compatibility with Verizon's 4G LTE network” — though plenty of people are using it with no issues and no update.]

82 Kellen Barranger. *FYI: DROID Turbo Can't Currently do Simultaneous Voice and Data*. <http://www.droid-life.com/2014/10/30/fyi-droid-turbo-cant-currently-do-simultaneous-voice-and-data/> [“We aren't sure why the device isn't capable of simultaneous voice and

technical standards. Verizon's "certification" delays appear to be motivated more by sales windows<sup>83</sup> than "technical standards." Verizon says Google and Verizon "worked together" to develop a "solution" to deliver "the necessary software" to devices sold by Google, Motorola, other carriers, and independent retailers but neglects to specify when it initially "worked together" with Google or specify the "solution" they allegedly developed.

53. As discussed in more detail above and below, I dispute Verizon's denials that it blocked customers from activating new SIM cards for third-party devices and imposed discriminatory pricing on customers who used third-party devices with existing SIMs.

54. Verizon doesn't deny that around May 25, 2015 (over 29 weeks after Google started accepting pre-orders), Verizon finally "certified" Nexus 6 smartphones sold by Google, Motorola, other carriers, and independent retailers.<sup>84</sup>

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data out of the box, but Verizon has confirmed to us that Advanced Calling 1.0 (which is their version of VoLTE) is required for it to work.”]

- 83 Nilay Patel. *Five years after the iPhone, carriers are the biggest threat to innovation.* <http://www.theverge.com/2012/7/5/3138711/five-years-after-the-iphone-carriers-are-the-biggest-threat-to-innovation-editorial> [“Google won't comment about a 4G version of the Nexus 7 on the record, but it's fair to say relations between the search giant and carriers are strained: multiple sources say that Verizon purposefully delayed shipment on the LTE Galaxy Nexus after announcing the Motorola Droid RAZR, forcing Google to send US journalists unlocked HSPA+ review units to be used on AT&T when the phone launched internationally. And when Verizon did eventually release the Nexus, it was stripped of Google's Wallet functionality — forestalling the growth of Google's mobile payment system while Verizon works on its own solution.”]
- 84 Shawn De Cesari. *[Probably Not Ready Yet] Verizon Appears To Be Gearing Up To Activate Any Nexus 6 Through Normal Procedures, Not Just Ones Sold By The Carrier, And There's An OTA Going Out For It.* <http://www.androidpolice.com/2015/05/25/probably-not-ready-yet-verizon-appears-to-be-gearing-up-to-activate-any-nexus-6-through-normal-procedures-not-just-ones-sold-by-the-carrier-and-theres-an-ota-going-out-for-it/> [“I had cancelled my Verizon account a while back because I was annoyed with my \$15 month-to-month discount falling off my account regularly due to the fact that I had an unapproved device.... She scanned the SIM card, but then when she tried to assign a plan - in this case, an individual 2 GB data plan - it told her the device was invalid.”]

**D. Verizon Continues to Block Other Compatible Third-Party Devices**

55. Contrary to Verizon's claims, the iPhone 5s (Model A1453), iPhone 5c (Model A1456), and iPhone 5 (Model A1429) sold by other carriers, for example, NorthwestCell (an LTE in Rural America partner with Verizon), support code division multiple access (CDMA), support LTE Band 13, and are compatible with the Verizon Wireless network. Also, I object to Verizon's misleading and deceptive statement that “not all versions” of the Microsoft Surface 3 support LTE Band 13. (See also Paulrajan Declaration ¶ 5.) Microsoft makes TWO versions of the Surface 3: a Wi-Fi-only version and a Wi-Fi + 4G LTE version. I did NOT list the Wi-Fi-only version or assert it supports LTE at all; however, I DID list the LTE version (sold by AT&T, T-Mobile, Verizon, Microsoft, and independent retailers) and assert it supports LTE Band 13 and is compatible with the Verizon Wireless network.

56. Verizon mentions “sound network management practices,” (Paulrajan Declaration ¶ 6) denies it is “impermissibly blocking” customers from activating SIMs for third-party devices, and claims the Commission's rules “expressly” permit “this approach” but neglects to quote specific text for any of its “sound network management practices” or provide evidence that it has reasonably applied them. The Commission *has* expressly recognized manipulative whitelisting and the importance of standards transparency:<sup>85</sup> Verizon's *ipse dixit* isn't enough. See 47 CFR § 27.16(f): “Once a complainant sets forth a *prima facie* case that the C Block licensee has refused to attach a device or application in violation of the requirements adopted in this section, the licensee shall have the burden of proof to demonstrate that it has adopted reasonable

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85 22 FCC Rcd. 15372 ¶ 224 (2007) [We believe that standards transparency should greatly reduce the potential for manipulative “white-listing,” *i.e.*, providers creating complex and vague qualification and approval processes for third parties before approval to attach devices or run applications on the network.]

network standards and reasonably applied those standards in the complainant's case.”

57. Verizon doesn't deny Microsoft announced the Surface 3 on March 31, 2015,<sup>86</sup> AT&T started selling it on July 24, T-Mobile started selling it on July 31, Microsoft started selling it (unlocked) on September 19,<sup>87</sup> and Verizon finally started selling it on November 12.<sup>88</sup> Verizon doesn't deny it is still blocking customers from activating SIMs for devices sold by AT&T, T-Mobile, Microsoft, and independent retailers.<sup>89</sup> As noted above, I object to Verizon's misleading and deceptive statement that “not all versions” of the Surface 3 support LTE Band 13. (See also Paulrajan Declaration ¶ 5.) Microsoft makes TWO versions of the Surface 3: a Wi-Fi-only version and a Wi-Fi + 4G LTE version. I did NOT list the Wi-Fi-only version or assert it supports LTE at all; however, I DID list the LTE version (sold by AT&T, T-Mobile, Microsoft, and independent retailers) and assert it supports LTE Band 13 and is compatible with the Verizon Wireless network.

58. I dispute Verizon's denial: For example, an iPhone 5s (Model A1453) sold by NorthwestCell (an LTE in Rural America partner with Verizon) supports code division multiple access (CDMA), supports LTE Band 13, and is compatible with the Verizon Wireless network.

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86 Microsoft. *Microsoft introduces Surface 3: The thinnest and lightest Surface yet.* <http://news.microsoft.com/2015/03/31/microsoft-introduces-surface-3-the-thinnest-and-lightest-surface-yet/> [“Microsoft will offer Surface 3 (4G LTE) through T-Mobile and Verizon Wireless in the U.S. later this year.”]

87 Brian Hall. *Surface 3 (4G LTE) now available in the U.S.!* <http://blogs.windows.com/devices/2015/07/24/surface-3-4g-lte-available-in-the-u-s/>

88 Albert Aydin. *Microsoft Surface 3 with Verizon 4G LTE now available for business professionals.* <https://www.verizonwireless.com/news/article/2015/11/microsoft-surface-3-with-verizon-4g-lte-now-available-for-business-professionals.html>

89 BrianFranklin. *If you have an unlocked Surface 3 LTE, can you check whether it's whitelisted by Verizon?* [https://www.reddit.com/r/Surface/comments/3t1btn/if\\_you\\_have\\_an\\_unlocked\\_surface\\_3\\_lte\\_can\\_you/](https://www.reddit.com/r/Surface/comments/3t1btn/if_you_have_an_unlocked_surface_3_lte_can_you/) (November 16, 2015) [“I bought mine via Microsoft Store unlocked and Verizon tells me: The phone associated with the Device ID you entered is not compatible with the Verizon Wireless network.”]

Please refer to the reply to Paragraph 55, above.

#### **IV. VERIZON IMPOSES DISCRIMINATORY PRICING ON BRINGING YOUR OWN DEVICE**

59. Verizon states that it isn't clear what is meant by “earlier plans”; plans earlier than Verizon's “Nationwide” plan include Verizon's “America's Choice” plans and plans from carriers (Alltel, for example) acquired by Verizon. Verizon doesn't deny that it offers subsidies to customers on its “Nationwide” and earlier plans who purchase devices through the carrier and sign two-year service contracts but doesn't offer service charge discounts for customers who forgo device subsidies by bringing their own devices. After Verizon's admission that “the service charge was the same whether the customer subsidized a phone or not” and that “the service charge did not change over the course of the two-year agreement (or even after the agreement expired),” Verizon's claim that “service charges under the Nationwide plan were not bundled with any device costs or device subsidies”<sup>90</sup> is absurd. Verizon's semantic gymnastics around the meaning of “bundling” fail the laugh test. The Wall Street Journal article I cited (which Verizon didn't dispute) corroborates that under wireless contract plans for which subscribers get subsidized smartphones, “carriers aim to recover the cost of subsidies that can top \$400 per phone through the monthly service fee.”<sup>91</sup> In its filings with the Securities and Exchange Commission, Verizon admits it “recovered those subsidies through higher service fees.”<sup>92</sup>

60. Verizon's claim that its line access charges did not “bundle in or reflect the cost of

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90 See also Ambio Declaration ¶ 2–4.

91 Thomas Gryta. *Verizon to Offer More Frequent Phone Upgrades if Subscribers Forgo Subsidies*. <http://www.wsj.com/articles/SB10001424127887324448104578613612706427942> (July 18, 2013)

92 Verizon Communications Inc., SEC Form 10-K for the fiscal year ended December 31, 2015, Exhibit 13.

any device subsidy”<sup>93</sup> fails the laugh test. See the paragraph above: Verizon's admits it “recovered those subsidies through higher service fees.” I admit I quoted a “third party article” by Thomas Gryta published by The Wall Street Journal; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint completely and accurately quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the same Web site of The Wall Street Journal. Otherwise, I agree with Verizon that the article speaks for itself:

The catch is that like AT&T, Verizon isn't offering lower monthly service fees to people who enroll in the new plan. That approach has rankled some followers of the telecom industry who argue existing service plans already bundle in the cost of hefty subsidies for smartphones. Users of the new plan, then, are effectively paying twice for their devices: the existing bundled charge for the subsidy, plus the new device financing charge.<sup>94</sup>

61. I admit I quoted an article by Nilay Patel available on the “third party website” of The Verge, a publication of Vox Media; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Otherwise, I agree with Verizon that the article speaks for itself:

But scratch past that surface layer and the Edge plan is just the same shell game as AT&T Next, designed to sucker customers into paying both the device subsidy built into Verizon's already high monthly fees and the full retail price of their phones....<sup>95</sup>

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93 Ambio Declaration ¶ 5–6.

94 Thomas Gryta. *Verizon to Offer More Frequent Phone Upgrades if Subscribers Forgo Subsidies*. <http://www.wsj.com/articles/SB10001424127887324448104578613612706427942> (July 18, 2013)

95 Nilay Patel. *Verizon's Edge phone upgrade plan is the same bad ripoff as AT&T Next*. <http://www.theverge.com/2013/7/18/4535068/verizons-edge-phone-upgrade-plan-same-bad-ripoff-as-att-next>

62. As discussed above, Verizon's claim that its line access charges did not “bundle in or reflect the cost of any device subsidy” fails the laugh test: Verizon admits it “recovered those subsidies through higher service fees.” Please refer to the reply to Paragraphs 59–60, above. I admit I quoted an article by Sinead Carew available on the “third party website” of Reuters; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Otherwise, I agree with Verizon that the article speaks for itself:

Analysts said customers would effectively be paying for their smartphones twice under Verizon's plan and a similar offering announced by No. 2 U.S. mobile service provider AT&T Inc. on Tuesday.<sup>96</sup>

63. I dispute Verizon's claim that it provided line access discounts under its MORE Everything plans as a “promotional” offer. Since February 13, 2014, The MORE Everything Plan FAQs on Verizon's Web site hadn't indicated these discounts were “promotional” until Verizon retroactively classified them as “promotional” on March 10, 2016.

64. Verizon doesn't deny its main public-facing Web page for the MORE Everything plan explicitly stated (without even mentioning discounts) that for customers who bring their own devices, the line access charge is \$25/month for data transfer caps up to 4 GB and \$15/month for data transfer caps of 6 GB or higher.<sup>97</sup>

65. I dispute Verizon's argument: The MORE Everything Plan FAQs on Verizon's Web site stated Verizon applies line access discounts “if you have a smartphone with Verizon

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96 Sinead Carew. *Verizon rules out service fee changes in new phone offer*.  
<http://www.reuters.com/article/us-verizon-edge-idUSBRE96H10S20130718> (July 18, 2013)

97 Verizon Wireless. *MORE Everything Plan*.  
<https://web.archive.org/web/20150814011508/https://www.verizonwireless.com/landingpages/more-everything/>



Edge or are on a month-to-month agreement,” and the main public-facing Web page for the MORE Everything plan explicitly stated (without even mentioning discounts) that for customers who bring their own devices, the line access charge is \$25/month for data transfer caps up to 4 GB and \$15/month for data transfer caps of 6 GB or higher.<sup>98</sup> Additionally, customer bills list the discounts by name (\$15 or \$25 off “month to month line access discount”). According to its own public disclosures, Verizon should've applied its appropriately-named month-to-month line access discounts for customers on month-to-month agreements. Verizon's “Verizon” plans correctly apply month-to-month line access charges even for customers with “unrecognized” smartphones. The article by Shawn De Cesari published by Android Police speaks for itself.<sup>99</sup>

66. No reply to Paragraph 66 is necessary.

67. As discussed in the reply to Paragraph 63, I dispute Verizon's claim that it provided line access discounts under its MORE Everything plans as a “promotional” offer. Since February 13, 2014, The MORE Everything Plan FAQs on Verizon's Web site hadn't indicated these discounts were “promotional” until Verizon retroactively classified them as “promotional” on March 10, 2016. As discussed in the replies to Paragraphs 59–60, Verizon's claim that its line access charges did not “bundle in or reflect the cost of any device subsidy” fails the laugh test: Verizon admits it “recovered those subsidies through higher service fees.”

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98 Verizon Wireless. *The MORE Everything Plan FAQs*.  
<https://web.archive.org/web/20150624052403/https://www.verizonwireless.com/support/more-everything-plan-faqs/>

99 Shawn De Cesari. *[Shocker] Even After Launching The Nexus 6, Verizon Still Won't Officially Activate One That Wasn't Purchased From The Carrier*.  
<http://www.androidpolice.com/2015/03/28/shocker-even-after-launching-the-nexus-6-verizon-still-wont-officially-activate-one-that-wasnt-purchased-from-the-carrier/> [“So, if you want the privilege of using a non-Verizon device on its network, you could be stuck paying a full \$40 monthly access fee on top of your data plan, rather than \$15 or \$25 as you would with a recognized device.”]

68. Please refer to the reply to Paragraph 67, above. Verizon admits that it did not distinguish between customers who “purchased a device” from Verizon and those who brought their own devices and that it *did* distinguish between customers “financing a device purchase” through Verizon and those who brought their own devices.<sup>100</sup> Of course, the Complaint argues that Verizon *should* distinguish between a subsidized device purchase and bringing your own device (unsubsidized) and that Verizon *shouldn't* distinguish between financing (unsubsidized) and bringing your own device (unsubsidized). Verizon doesn't deny that on MORE Everything plans with data transfer caps of 6 GB or higher, over 24 months, the effective line access charge is \$360 to finance a smartphone through Verizon but \$960 to bring your own smartphone. I dispute that making the use of third-party devices more expensive is a “permitted incentive” for compelling customers to finance devices through Verizon.

69. Verizon admits that it did not draw a distinction between customers who “purchased a device” from Verizon and those who brought their own devices and that it *did* draw a distinction between customers “financing a device purchase” through Verizon and those who brought their own devices. Of course, the Complaint argues that Verizon *should* distinguish between a subsidized device purchase and bringing your own device (unsubsidized) and that Verizon *shouldn't* distinguish between financing (unsubsidized) and bringing your own device (unsubsidized). Verizon doesn't deny that before November 15, 2015, Verizon waived “activation fees” for customers financing devices through the carrier but charged \$40 for customers bringing their own devices. I dispute that making the use of third-party devices more expensive was a “permitted incentive” for compelling customers to finance devices through Verizon.

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<sup>100</sup> Ambio Declaration ¶ 13.

**V. VERIZON INTERFERES WITH EDGE PROVIDERS' ABILITY TO MAKE THE DEVICES OF THEIR CHOICE AVAILABLE TO CUSTOMERS**

**A. Verizon Disables (or Compels Edge Providers to Disable) FM Radio Capabilities**

70. I admit that whether Verizon has requirements that compel handset suppliers to disable FM radio capabilities and whether Verizon compels handset suppliers to disable FM radio capabilities are separate questions. Verizon alleges “activating the FM feature” can “impact” the reception of other frequencies and “affect” device performance but neglects to elaborate. I agree with Verizon that the excerpt I quoted speaks for itself:

The FM radio being disabled is not a choice that was made by HTC; each carrier makes their own specifications for their devices. In this case, Verizon requested that the FM radio not be available on their version of the Touch Pro2. It is possible that they have their own radio software; it is possible that it is something they will make available in a future update. However, there is nothing that HTC Technical Support can do to unlock this feature, as we cannot go against the wishes of the carrier who purchased the device from us.<sup>101</sup>

71. The response by Verizon speaks for itself: “Decisions on what applications and functions will be available on our phones are made by our Marketing Department, and can not be overridden.”<sup>102</sup> See also *supra* ¶ 6.

72. I object to Verizon's denial that it blocked HTC from providing “FM tuner capability” on devices sold by Verizon. Please see the reply to Paragraph 70, above. Verizon doesn't deny the HTC One M8 includes an FM radio chip. To the extent HTC intended to preload its own FM tuner app to use the FM radio chip it included in its smartphone, explicitly or implicitly requesting that HTC make its FM tuner app unavailable to customers as a preloaded application would violate 47 CFR § 27.16(e) and the 2012 Order and Consent Decree. Verizon

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101 oneders65. *What HTC and Verizon say about disabled FM radio...* <http://forum.xda-developers.com/showpost.php?p=4576551> (September 21, 2009)

102 *Id.*

doesn't specifically dispute the newsletter from the National Association of Broadcasters:

A further example is the HTC One. The M8 version of this smartphone has the FM radio enabled across all major U.S. carriers, but with different apps on different carriers: Sprint ships it with NextRadio pre-installed, AT&T and T-Mobile provide a native HTC-supplied FM tuner app (without hybrid radio capability), and Verizon ships it with no FM app (and no mention in the manual that the phone has FM capability).<sup>103</sup>

73. The newsletter from the National Association of Broadcasters speaks for itself:

It has recently been determined that the newly released successor model, the HTC One M9, is being shipped by Verizon with a different software load, which purposefully blocks the user accessing the device's FM radio capability via a downloaded app. Contrary to the Verizon version of the M8, where the FM radio was functional although not readily available to the consumer, this new version of the Verizon HTC One cannot be activated by downloading an Android FM radio app.<sup>104</sup>

74. The articles by Jared Dipane<sup>105</sup> and David Ruddock speak for themselves:

Yep: FM radio is a legitimately useful add-on, and one that basically every smartphone should support, but that has nearly been destroyed by the profit motives of the music streaming and wireless carrier industries. LG's unlocked G5s should all ship with FM radio enabled as far as I know - my unlocked EU version has the FM radio app installed by default. Unfortunately, I already know Verizon has disabled it on their G5, but it does appear to be active on Sprint's (you'll apparently have to download an app to use it, though).<sup>106</sup>

75. The article from the National Association of Broadcasters speaks for itself:

Virtually all smartphones are manufactured with hardware capable of receiving free FM radio signals. However, one major U.S. wireless carrier Verizon - blocks this feature that can save consumers battery life and data charges, while also providing a critical lifeline during times of emergency.<sup>107</sup>

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103 NAB Labs. *Research Shows Increased Diversity in FM Radio on Smartphones*. <http://www.nab.org/xert/sciTech/2015/RD05182015.pdf> (May 15, 2015)

104 *Id.*

105 Jared Dipane. *Here are the things the Verizon LG G4 doesn't have that other variants do: Verizon does it again*. <http://www.androidcentral.com/here-are-things-verizon-lg-g4-doesnt-have-other-variants-do> (June 5, 2015)

106 David Ruddock. *5 Things I Love About The LG G5*. <http://www.androidpolice.com/2016/04/29/5-things-i-love-about-the-lg-g5/>

107 National Association of Broadcasters. *Expand Access to Emergency Information: Unlock*

76. I admit I quoted a document available on the “third party website” of the National Association of Broadcasters.<sup>108</sup>

77. No reply to Paragraph 77 is necessary.

78. Please see the replies to Paragraphs 70 and 72, above.

**B. Verizon Disables (or Compels Apple to Disable) Embedded Apple SIMs**

79. Verizon doesn't deny it disabled Embedded Apple SIMs. As Apple's Web site confirms<sup>109</sup> and as Ina Fried (The Orange County Register, The Orange County Business Journal, CNET, All Things Digital, Recode) reported:

T-Mobile and Sprint are fully supporting the built-in Apple SIM feature. AT&T, however, will tie the Apple SIM to its network if you buy your iPad at one of its retail stores. Verizon, meanwhile, will require a separate SIM card and disable the built-in embedded Apple SIM on the iPads it sells.<sup>110</sup>

80. Verizon states that it isn't clear what is meant by the claim that “Verizon's retail operations dominate device sales” for its subscribers. A 2013 Consumer Intelligence Research Partners study found that of the carriers, Verizon gets the biggest proportion of device sales—57

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- FM. <http://www.nab.org/advocacy/issue.asp?id=2354&issueid=1082> (March 23, 106)
- 108 National Association of Broadcasters. *Other countries' offerings of mobile phones with radio capability dwarf the U.S.* [http://www.nab.org/documents/radio/International\\_Radio\\_Phone\\_Facts.pdf](http://www.nab.org/documents/radio/International_Radio_Phone_Facts.pdf) (March 23, 2016) [“Some believe this is because carriers make a significant amount of money off of data streaming, and might lose some of that revenue if customers had the ability to access local radio on their phone for free. Americans are asking why the mobile phone gatekeepers are resistant to offering a free entertainment option that will also provide lifesaving emergency information in times of crisis, especially since the top 10 best-selling smartphones already contain the chip that allows broadcast radio reception; it simply needs to be activated.”]
- 109 Apple. *Use Apple SIM with Wi-Fi + Cellular models of iPad.* <https://support.apple.com/en-us/HT203099> (June 12, 2016) [“Verizon (Verizon retail locations): The embedded Apple SIM isn't enabled.”]
- 110 Ina Fried. *Latest iPad Pro Makes It Even Easier to Switch Wireless Carriers.* <https://recode.net/2016/03/22/latest-ipad-pro-makes-it-even-easier-to-switch-wireless-carriers/>

percent—from its own stores. See the Complaint ¶ 26.

81. Verizon “justified” disabling Embedded Apple SIMs by mentioning “reasonable technical requirements” but neglected to quote specific text from them or provide evidence that it has reasonably applied them, as required by 47 CFR § 27.16(f).<sup>111</sup>

**VI. VERIZON INTERFERES WITH CUSTOMERS' ABILITY TO USE THE APPLICATIONS OF THEIR CHOICE AND EDGE PROVIDERS' ABILITY TO MAKE THE APPLICATIONS OF THEIR CHOICE AVAILABLE TO CUSTOMERS**

**A. Verizon Disables Built-in Tethering Features and Charges an Additional \$20.00/Month to Re-Enable Them**

82. Verizon denies it blocked third-party tethering applications, but Google confirmed it made tethering applications unavailable at the request of Verizon and other wireless carriers. Verizon denies that it disables built-in tethering features and charges an additional \$20.00/month to re-enable them and alleges the existence of its own “tethering service” (in connection with “certain data plans”), but a sworn declaration by Worldcall Interconnect CEO Lowell Feldman corroborates that no such “tethering service” exists, and hard evidence proves that Verizon's statements are false: Google's source code repository for the Android operating system shows that AT&T requested that Google disable tethering features Google built into the Asus Nexus 7 (codenamed “deb”) and that AT&T and Verizon requested that Google disable tethering features Google built into the Motorola Nexus 6 (codenamed “shamu”) unless customers pay additional fees to re-enable them. Verizon says the Commission has “acknowledged” that Verizon charges an additional monthly fee for tethering “but has not stated any concern with that practice.”

However, I dispute Verizon's claim that there is no prohibition on application-specific charges for

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<sup>111</sup> Letter from Verizon Assistant General Counsel Ann Rakestraw to Alex Nguyen (May 11, 2016)

tethering: Even if Verizon was able to deceive the Commission into believing Verizon has its own “tethering service,” acknowledging conduct and not stating concern with conduct aren't the same as expressly endorsing conduct. The plain language of the C Block Rules, the *2010 Open Internet Order*, the *2012 Order and Consent Decree*, articles consistent with this interpretation published by The New York Times and ZDnet, remarks by FCC Chairman Tom Wheeler, and the *2015 Open Internet Order* contradict Verizon's claim. See *supra* ¶ 15 for citations.

83. Please refer to the reply to Paragraph 82, above.

84. Verizon admits it doesn't disable the video calling application FaceTime or impose application-specific charges on customers paying for bandwidth-based (“unlimited”) data plans to use the high-bandwidth application.<sup>112</sup>

85. I dispute Verizon's denial that it is imposing application-specific discrimination against tethering. Please refer to the reply to Paragraph 82, above. Verizon doesn't deny tethering isn't necessarily a high-bandwidth application and can't utilize more bandwidth than any other application can. Verizon doesn't deny one can tether a smartphone's Internet connection to a tablet, for example, to take advantage of the tablet's larger screen for high-bandwidth applications like FaceTime or low-bandwidth applications like e-mail.

**B. Verizon Compelled Customers to Use FamilyBase and Blocked Samsung from Enabling Blocking Mode**

86. I dispute Verizon's denial that it compelled Samsung to disable Blocking Mode: The notion that Samsung blocked itself from enabling Blocking Mode is absurd. Blocking Mode

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112 Thomas Gryta. *Verizon Wireless to Include Cellular FaceTime on All Data Plans*. <http://blogs.wsj.com/digits/2012/09/12/verizon-wireless-to-include-cellular-facetime-on-all-data-plans/> [“All Verizon Wireless customers will be permitted to use the data-intensive application with no additional charges, including those remaining on unlimited data plans, according to a company spokeswoman.”]

is enabled on Samsung devices compatible with the wireless networks of other carriers.

**C. Verizon Compelled Samsung to Preload Isis Wallet and Blocked Pay with PayPal**

87. Contrary to Verizon's distortions, I did NOT assert Verizon must preload particular applications (or sell particular devices preloaded with particular applications); however, I DID assert the Commission's rules prohibit Verizon from interfering with *edge providers' choice* to preload particular applications (*e.g.*, Pay with PayPal) or their choice to not preload particular applications (*e.g.*, Isis Wallet). Section 27.16(e) of the Commission's rules states, "No licensee may disable features on handsets it provides to customers," but Verizon believes it can circumvent this rule by explicitly or implicitly requesting that Samsung not preload Pay with PayPal on its handsets *before* Verizon will provide them to customers. However, the *700 MHz Second Report and Order* required C Block licensees to allow "customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice" to foster "greater balance between device manufacturers and wireless service providers," and the *2012 Order and Consent Decree* affirms Verizon may not "explicitly or implicitly request" that applications be made unavailable to customers. Verizon vacuously says it doesn't block device suppliers from preloading the applications of their choice on devices other carriers provide to customers, but Verizon doesn't deny it blocks device suppliers from preloading the applications of their choice on devices Verizon provides to customers. Also, I dispute Verizon's claim that it does not "block" edge providers from offering applications as separate downloads: Verizon blocked Samsung from offering Pay with PayPal as a separate download before April 24, 2014. See *supra* ¶ 42 for citations. Verizon denies it "impermissibly" blocked Pay with PayPal (or Google Wallet), but the



article by Kellen Barranger speaks for itself:

After spending only a few minutes with the Verizon variant of the GS5, we have already discovered that Big Red has pulled Paypal payments authorized with your fingerprint, another of the major features promoted by Samsung for their 2014 flagship. It was also announced this morning by Paypal.

I noticed the missing feature, because in our video yesterday on how to setup the fingerprint scanner in the Galaxy S5 on the AT&T model, Paypal is listed as one of the features that can be used. On the Verizon model, that entire option is gone, along with any chance of getting it installed.

[...]

I should point out that I tried to install the NNL Fingerprint Passport app on the Verizon variant through Samsung's app store and was told that it "will not work on your device." Somehow, installation is being blocked.<sup>113</sup>

88. I admit I quoted an article by Stephen Schenck available on the "third party website" of Pocketnow; however, I dispute Verizon's claim that it "cannot admit or deny whether the Complaint accurately and completely quotes" the article. Verizon admits Paragraph 6 of the Complaint "appears to accurately quote" an article available on the Web site of The Wall Street Journal. Otherwise, I agree with Verizon that the article speaks for itself:

On most Galaxy S5 handsets, the "Pay with PayPal" option shows up under the phone's settings menu for the fingerprint scanner. On the Verizon edition: no such option.

There's also an app called the NNL Fingerprint Passport that Samsung requires GS5 owners to download from its app store to enable this PayPal functionality, and while other GS5 models have no issue downloading, installing, and getting set up, the Verizon GS5 returns an error explaining that the app isn't compatible with the phone.<sup>114</sup>

89. Verizon doesn't deny it said it was "evaluating" Pay with PayPal but didn't specify

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113 Kellen Barranger. *Verizon Disabled Paypal Fingerprint Payment Support on the Galaxy S5, Google Wallet Works Though*. <http://www.droid-life.com/2014/04/11/verizon-disabled-paypal-fingerprint-support-on-the-galaxy-s5-google-wallet-works-though/>

114 Stephen Schenck. *More US carrier GS5 shenanigans: Verizon blocks fingerprint for PayPal*. <http://pocketnow.com/2014/04/11/verizon-gs5-fingerprint-scanner>

what it was evaluating.<sup>115</sup>

90. Verizon doesn't deny that it blocked Samsung from offering Pay with PayPal as a separate download before April 21, 2014, that it continued to block Samsung from *preloading* Pay with PayPal, and that customers needed to “sideload” applications to enable the feature. Verizon denies it blocked Pay with PayPal, but blocking Samsung from preloading the application is blocking.

**D. Verizon Compelled Samsung to Preload Verizon Cloud and Blocked Samsung from Preloading Microsoft OneDrive**

91. Verizon doesn't deny it was charging over two-and-a-half times what Microsoft was charging for a quarter of the storage Microsoft was offering. I agree with Verizon that the article by Eric M. Zeman speaks for itself.<sup>116</sup> Contrary to Verizon's distortions, I did NOT assert Verizon must preload particular applications (or sell particular devices preloaded with particular applications); however, I DID assert the Commission's rules prohibit Verizon from interfering with *edge providers' choice* to preload particular applications (*e.g.*, Microsoft OneDrive) or their choice to not preload particular applications (*e.g.*, Verizon Cloud). Section 27.16(e) of the Commission's rules states, “No licensee may disable features on handsets it provides to customers,” but Verizon believes it can circumvent this rule by explicitly or implicitly requesting that Samsung not preload Microsoft OneDrive on its handsets *before* Verizon will provide them to customers. However, the *700 MHz Second Report and Order* required C Block licensees to allow “customers, device manufacturers, third-party application developers, and others to use or

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<sup>115</sup> *Id.*

<sup>116</sup> Eric M. Zeman. *Review: Samsung Galaxy S6 for Verizon Wireless : Extras*. <http://www.phonescoop.com/articles/article.php?a=15275&p=6453> (April 30, 2015) [“Third, Microsoft OneDrive is ... oh, wait, Verizon doesn't seem to care for Samsung's relationship with Microsoft, and didn't preload OneDrive (or any other Microsoft apps) at all. Sprint and T-Mobile's variants of the S6 have OneDrive preloaded.”]

develop the devices and applications of their choice” to foster “greater balance between device manufacturers and wireless service providers,” and the *2012 Order and Consent Decree* affirms Verizon may not “explicitly or implicitly request” that applications be made unavailable to customers. Verizon vacuously says it doesn't block device suppliers from preloading the applications of their choice on devices other carriers provide to customers,<sup>117</sup> but Verizon doesn't deny it blocks device suppliers from preloading the applications of their choice on devices Verizon provides to customers. See *supra* ¶ 42 for citations.

92. The National Football League and Slacker are “commercial partners” with Verizon.

93. Verizon doesn't deny it declined to say why the Microsoft apps wouldn't be preloaded. I agree with Verizon that the article by Shira Ovide available on the Web site of The Wall Street Journal speaks for itself:

AT&T and Verizon Wireless, the two biggest U.S. wireless carriers, aren't onboard with the arrangement to include three Microsoft apps on Samsung's Galaxy S6, the flagship products of the world's biggest maker of smartphones.<sup>118</sup>

94. Verizon doesn't deny that since April 10, 2015, Samsung has preloaded Microsoft applications on its Galaxy S6 smartphones compatible with the wireless networks of Sprint, T-Mobile, and other carriers but not on ones Verizon has elected to “certify.” As noted above, I dispute Verizon's denial that it blocked Microsoft applications: Blocking Samsung from preloading the applications is blocking.

95. As noted above, I dispute Verizon's denial that it blocked Microsoft applications:

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117 Dennis Declaration ¶ 6.

118 Shira Ovide. *Verizon and AT&T Won't Preinstall Three Microsoft Apps on Samsung S6*. <http://blogs.wsj.com/digits/2015/04/15/verizon-and-att-wont-pre-install-three-microsoft-apps-on-samsung-s6/>

Blocking Samsung from preloading the applications is blocking. Verizon also compelled Samsung to preload Verizon Cloud but disable Samsung Cloud on its Galaxy Note7 smartphone.<sup>119</sup>

**E. Verizon Compelled Samsung to Preload Android Pay and Blocked Samsung Pay**

96. I admit I quoted an article by Jason Del Rey available on the “third party website” of Recode, a publication of Vox Media. I agree with Verizon that the article speaks for itself:

Shoppers in the U.S. have so far failed to widely adopt mobile payment schemes like Google Wallet or ones derived from the wireless carriers themselves, but industry analysts and executives believe Apple can change that. One key difference here is Apple makes both its phones and its operating system, so wireless carriers can’t block customers from using Apple’s mobile payment technology as they did with Google. Apple’s mobile payment system will be fully integrated in its phones, and if a carrier wanted to block the technology, it would have to stop selling the new iPhones altogether. That’s not going to happen.<sup>120</sup>

97. As discussed above, I dispute Verizon's denial that it blocked Google Wallet. Verizon doesn't specifically deny it announced on February 23, 2015 a deal allowing Google to preload its mobile payment service if Google gave Verizon a greater cut of revenue.<sup>121</sup> I admit I quoted an article by Alistair Barr available on the “third party website” of The Wall Street Journal; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the article. Verizon admits Paragraph 6 of the Complaint

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119 Kellen Barranger. *Verizon’s Galaxy Note 7 Another Example of Carriers Interfering for No Good Reason*. <http://www.droid-life.com/2016/08/22/verizons-galaxy-note-7-another-example-carriers-interfering-no-good-reason/>

120 Jason Del Rey. *Apple Introduces Apple Pay to Try to Replace Your Wallet*. <https://recode.net/2014/09/09/apple-introduces-apple-pay-to-try-to-replace-your-wallet/>

121 Jason Del Rey. *Google Strikes Mobile Payments Deal With Big Wireless Carriers, Buys Softcard Technology*. <https://recode.net/2015/02/23/google-strikes-deal-with-big-wireless-carriers-buys-softcard-technology/> [“The partnership and purchase marks an ironic turn of events for all parties. One of the main reasons Google Wallet never took off as a tap-and-pay option in brick-and-mortar stores is because the wireless carriers had blocked the technology from working on their phones.”]

“appears to accurately quote” an article available on the same Web site of The Wall Street Journal. Otherwise, I agree with Verizon that the article speaks for itself:

The three wireless carriers are more willing to work with Google these days, because they get no revenue from Apple Pay, the people familiar with the matter say. Mr. Freed-Finnegan said that's created an incentive for Google and the carriers to cooperate. “Certainly Apple isn't working with the carriers,” he said.

The three carriers and Softcard declined to comment.

In talks with the carriers, Google is offering to pay them to feature Wallet prominently on their Android phones and is dangling the promise of more revenue from advertising tied to Google searches made on the phones, according to the people familiar with the matter.<sup>122</sup>

98. The press release available on the Web site of Samsung speaks for itself: On March 1, 2015, Samsung announced it would launch Samsung Pay—a mobile payment service that lets customers use their mobile devices to pay at both terminals that support near field communication and also terminals that support magnetic stripe cards—by summer.<sup>123</sup> The article by Jungah Lee available on the Web site of Bloomberg speaks for itself: On June 3, Samsung announced it would delay launching Samsung Pay until September.<sup>124</sup> Verizon doesn't deny that on August 21, Samsung announced Samsung Pay would launch on September 28 and would be available on devices compatible with the wireless networks of AT&T, Sprint, T-Mobile, and U.S. Cellular. Verizon again says it was “evaluating” Samsung Pay but neglects to specify what it was evaluating. I admit I quoted an article by Chris Welch available on the “third party website” of

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122 Alistair Barr. *To Revive Wallet, Google Tries to Wrangle Unruly Partners*.

<http://www.wsj.com/articles/to-revive-wallet-google-tries-to-wrangle-unruly-partners-1424392928> (February 20, 2015)

123 Samsung. *Samsung Announces Samsung Pay, A Groundbreaking Mobile Payment Service*. <https://www.samsungmobilepress.com/2015/03/02/Samsung-Announces-Samsung-Pay,-A-Groundbreaking-Mobile-Payment-Service>

124 Jungah Lee. *Samsung Delays Start of Mobile Payment Service to September*. <http://www.bloomberg.com/news/articles/2015-06-03/samsung-delays-planned-start-of-new-smartphone-payments-service>

The Verge, a publication of Vox Media. I agree with Verizon that the article speaks for itself:

But this is familiar territory for Verizon, and not in a good way. For years, the carrier hindered Google Wallet's efforts in the US by blocking the app from its phones or, at a minimum, disabling NFC payments. And yet in 2015, Verizon will soon be backing Google's payment solution in a big way — and may cut off Samsung Pay in the process. Launching without Verizon in its corner wouldn't be great for Samsung; Apple didn't have to deal with this sort of roadblock when rolling out Apple Pay.<sup>125</sup>

99. I agree with Verizon that the Verizon statement speaks for itself.<sup>126</sup> Verizon said it was extensively “testing” Samsung Pay but neglected to specify what it was testing.

100. I agree with Verizon that its tweet speaks for itself: Verizon told customers that while it was “evaluating” Samsung Pay, they could use Android Pay instead:

Verizon continues to evaluate Samsung Pay. Interested in mobile payments?  
Android Pay is now avail[able] [vz.to/1FkQgbi](http://vz.to/1FkQgbi)<sup>127</sup>

101. Verizon admits that Samsung Pay launched on September 28, 2015 and that Verizon “elected not to sell” Samsung devices preloaded with Samsung Pay. Verizon again says it was “evaluating” Samsung Pay but neglects to specify what it was evaluating. Verizon doesn't deny Samsung preloaded Samsung Pay on its devices compatible with the wireless networks of AT&T, Sprint, T-Mobile, and U.S. Cellular via a software update. Verizon doesn't deny Verizon subscribers couldn't use Samsung Pay (as a preloaded application or as a separate download)<sup>128</sup>

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125 Chris Welch. *Verizon might not support Samsung Pay at launch.*

<http://www.theverge.com/2015/8/21/9189377/verizon-not-supporting-samsung-pay>

126 Tracy G. Response to complaint.

[https://www.reddit.com/r/Android/comments/3hnmvt/i\\_sent\\_an\\_email\\_to\\_various\\_verizon\\_executives/](https://www.reddit.com/r/Android/comments/3hnmvt/i_sent_an_email_to_various_verizon_executives/) (August 19, 2015) [“Verizon Wireless is actively reviewing and testing the Samsung Pay option. While we do not have a release date I can currently give you, ... evaluation of the service has not been completed as of yet. The extensive testing we do ensures our customers continue to enjoy the best network and services available in the market.”]

127 Verizon. Tweet on September 18, 2015.

<https://twitter.com/VerizonNews/status/644943722543714304>

128 Sean O'Kane. *Samsung Pay launches in the United States.*

but subscribers to other carriers could (as a preloaded application).

102. The letters to me<sup>129</sup> and others<sup>130</sup> speak for themselves: Verizon denies it blocks Samsung Pay, but blocking Samsung from preloading Samsung Pay on its devices is blocking. I admit it is in Verizon's self-interest to permit its customers to access Verizon-backed Android Pay as a preloaded application but not permit its customers to access Samsung Pay as a preloaded application. I admit I quoted an article by Jason Del Rey available on the “third party website” of Recode, a publication of Vox Media; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Otherwise, I agree with Verizon that the article speaks for itself:

A Samsung Pay executive said this summer at a press briefing that the holdup with Verizon was over “economics,” but declined to comment further.<sup>131</sup>

103. I admit I quoted an article by Tim Wrobel (available on the “third party website” of Droid Life, a publication of DRD Life Inc.) that questioned why Samsung would offer Samsung Pay as a separate download instead of just preloading Samsung Pay on its devices.<sup>132</sup>

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<http://www.theverge.com/2015/9/28/9408749/samsung-pay-united-states-launch> [“Almost all of the major carriers do already support it, though. The only holdout is Verizon, which continues to say that it is “in the process of evaluating Samsung Pay.”]

129 Letter from Verizon Assistant General Counsel David Haga to Alex Nguyen (January 18, 2016)

130 Mark B. Response to informal complaint.

[https://www.reddit.com/r/GalaxyS6/comments/3lzwue/fcc\\_complaint\\_against\\_verizon\\_filed/](https://www.reddit.com/r/GalaxyS6/comments/3lzwue/fcc_complaint_against_verizon_filed/) (October 2, 2015)

131 Jason Del Rey. *Samsung Pay Eliminates Big Hurdle by Snagging Verizon as Partner.*

<https://recode.net/2015/10/21/samsung-pay-eliminates-big-hurdle-by-snagging-verizon-as-partner/>

132 Tim Wrobel. *Samsung's GM of Samsung Pay Claims Verizon Owners Might Have Access in the “Next Week or So”* <http://www.droid-life.com/2015/09/29/samsung-pay-verizon-tweet/> [“I could be completely off base here, but the tweet sounds very iffy to me. Not only has

104. I admit I quoted a statement available on the “third party website” of Samsung; however, I object to Verizon's statement that it cannot admit or deny whether Samsung's Web site accurately and completely reported Samsung's statements. Otherwise, I agree with Verizon that Samsung's Web site speaks for itself. At least as early as September 8, 2015 and at least as late as September 29, 2015, Samsung stated that it would preload Samsung Pay on its devices and that the application would not be available as a separate download:

Can I download Samsung Pay from Google Play™ store or Galaxy Apps?

Samsung Pay will be preloaded on future compatible Samsung devices and will not be available for download in Google Play store or Galaxy Apps.<sup>133</sup>

105. Verizon admits that in October 2015, Verizon did not sell Samsung devices preloaded with Samsung Pay. Verizon denies it “impermissibly blocked Samsung Pay in any way” but doesn't deny it continued to block Samsung from preloading Samsung Pay on its devices.

106. Verizon admits Samsung had to create a separate set of instructions to show Verizon subscribers how to access Samsung Pay (just as PayPal had to do for Pay with PayPal<sup>134</sup>).

107. Verizon admits it sold Samsung Galaxy S7 and Galaxy S7 edge devices that weren't preloaded with Samsung Pay but were preloaded with Verizon-backed Android Pay.

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Verizon not given any inclination that they are ready to announce support for Samsung's mobile payment service, but Graylin claims that the Samsung Pay app will be downloadable via Google Play. As most Samsung device owners should know, this app is not available via Google Play for anyone, or even from the Galaxy Apps application. The app comes preinstalled on the newest Galaxy devices, and is not available via 3rd-party stores anywhere, at least right now.”]

133 Samsung. *Can I download Samsung Pay from Google Play™ store or Galaxy Apps?* <https://web.archive.org/web/20150908210752/http://www.samsung.com/us/support/answer/ANS00043831/997409700>

134 *Supra* Section VI.C.



Verizon denies it “impermissibly blocked Samsung Pay in any way,” but blocking Samsung from preloading Samsung Pay on its devices is blocking. I admit I quoted an article by David Ruddock available on the “third party website” of Android Police, a publication of Illogical Robot LLC; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Otherwise, I agree with Verizon that the article speaks for itself:

Verizon, long known in the carrier business for being a bunch of jerks, have once again proven their general aptitude for jerkery with a pretty annoying modification to their versions of the Galaxy S7 and S7 edge. Specifically? They removed Samsung Pay. We verified this on our own devices, and reviewers are now citing Samsung in saying that Verizon demanded it be removed from the phones.

Why? Well, given that Verizon is a member of the now-defunct Softcard group that is currently partnered with (read: taking money from) Android Pay, it seems probable that Samsung wasn't willing to cut Verizon in on Samsung Pay revenue - if there is any - to the degree they desired. And so, Verizon strong-armed Samsung into removing the app. This is objectively dumb. Searching the Play Store or Galaxy Apps from Verizon's S7 or S7 edge for “Samsung Pay” yields no results.

[...]

Samsung Pay is not pre-loaded on Verizon models, unlike some other US carriers, and Verizon does not advertise the app - and even went so far as to strip it from the user manuals of its versions of the S7 and S7 edge ...<sup>135</sup>

108. Verizon doesn't deny Samsung told technology journalist Walt Mossberg (The Wall Street Journal, All Things Digital, Recode, The Verge) that Verizon blocked Samsung from preloading Samsung Pay on its devices:

Samsung says Verizon barred including Samsung's browser and Samsung Pay out

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135 David Ruddock. *Verizon, Who Are A Bunch Of Jerks, Took Samsung Pay Off The Galaxy S7 And S7 Edge*. <http://www.androidpolice.com/2016/03/08/verizon-who-are-a-bunch-of-jerks-took-samsung-pay-off-the-the-galaxy-s7-and-s7-edge-but-you-can-sideload-it/>

of the box.<sup>136</sup>

109. I admit it is in Verizon's self-interest to permit its customers to access Verizon-backed Android Pay as a preloaded application but not permit its customers to access Samsung Pay as a preloaded application. I admit I quoted articles available on the "third party websites" of Phone Arena and Digital Trends, a publication of Designtecnica Corporation; however, I dispute Verizon's claim that it "cannot admit or deny whether the Complaint accurately and completely quotes" the articles. Verizon admits Paragraph 6 of the Complaint "appears to accurately quote" an article available on the Web site of The Wall Street Journal. Otherwise, I agree with Verizon that the articles speak for themselves:

This isn't the first time Verizon blocked a mobile pay app. The carrier blocked Google Wallet (now Android Pay) from being installed on its devices because it partly owned Softcard (formerly Isis), another mobile payment service. However, Softcard was purchased by Google in February 2015. We can only assume that Verizon prefers that customers use Android Pay because it most likely receives royalties from Google. Verizon is banking on the hope that most customers won't know about Samsung Pay and as a result won't even look for it.<sup>137</sup>

110. I admit I quoted an article by Karl Bode available on the "third party website" of DSLReports; however, I dispute Verizon's claim that it "cannot admit or deny whether the Complaint accurately and completely quotes" the articles. Verizon admits Paragraph 6 of the Complaint "appears to accurately quote" an article available on the Web site of The Wall Street Journal. Otherwise, I agree with Verizon that the article speak for itself:

Verizon receives commission payments from Google for pushing Android Pay, and if users don't know that Samsung Pay exists, that's more money in Verizon's pocket by default.<sup>138</sup>

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136 Walt Mossberg. *Mossberg: Samsung's New Galaxy S7 Phones Are Beautiful*.  
<https://recode.net/2016/03/08/mossberg-samsungs-new-galaxy-s7-phones-are-beautiful/>

137 Robert Nazarian. *No Samsung Pay on Verizon Galaxy S7 and S7 Edge*.  
<http://www.digitaltrends.com/mobile/verizon-removes-samsung-pay/> (March 9, 2016)

138 Karl Bode. *Verizon, Being Verizon, Pulls Samsung Pay From New Galaxy S7*.

111. Contrary to Verizon's distortions, I did NOT assert Verizon must preload particular applications (or sell particular devices preloaded with particular applications); however, I DID assert the Commission's rules prohibit Verizon from interfering with *edge providers' choice* to preload particular applications (*e.g.*, Samsung Pay) or their choice to not preload particular applications (*e.g.*, Verizon-backed Android Pay). Section 27.16(e) of the Commission's rules states, “No licensee may disable features on handsets it provides to customers,” but Verizon believes it can circumvent this rule by explicitly or implicitly requesting that Samsung not preload Samsung Pay on its handsets *before* Verizon will provide them to customers. However, the *700 MHz Second Report and Order* required C Block licensees to allow “customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice” to foster “greater balance between device manufacturers and wireless service providers,” and the *2012 Order and Consent Decree* affirms Verizon may not “explicitly or implicitly request” that applications be made unavailable to customers. Verizon vacuously says it doesn't block device suppliers from preloading the applications of their choice on devices other carriers provide to customers, but Verizon doesn't deny it blocks device suppliers from preloading the applications of their choice on devices Verizon provides to customers. Also, I dispute Verizon's claim that it does not “block” edge providers from offering applications as separate downloads: Verizon blocked Samsung from offering Samsung Pay as a separate download before Samsung “partnered” with Verizon on October 21, 2015. See *supra* ¶ 42 for citations. I admit I quoted an article by Colin Gibbs available on the “third party website” of Fierce Wireless, a publication of Qwestex LLC;

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<https://www.dslreports.com/shownews/Verizon-Being-Verizon-Pulls-Samsung-Pay-From-New-Galaxy-S7-136471> (March 10, 2016)

however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint accurately and completely quotes” the articles. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal.

Otherwise, I agree with Verizon that the article speaks for itself:

Verizon declined to confirm that it had opted not to pre-load the app into the Galaxy S7, though, and didn't say why Samsung Pay isn't pre-loaded on its S7 phones.

A Samsung representative confirmed Verizon's decision not to include Samsung Pay in Verizon S7 phones. The representative told FierceWireless though that “all the other major carriers do preload Samsung Pay.”

[...]

Regardless of its motive, Verizon's lack of support for certain mobile payments solutions is nothing new. The carrier actively blocked Google Wallet when it was pursuing Softcard (which was then known as Isis), although it claimed to do so on technical grounds.<sup>139</sup>

112. Verizon doesn't deny Jeffrey Nelson, Verizon's Vice President of Global Communications, said Samsung Pay was undergoing “testing” (again<sup>140</sup>); again, Verizon didn't specify what it was evaluating. Please refer to the reply to Paragraph 98, above.

113. Verizon denies it “impermissibly blocked” Samsung Pay, even though Verizon outright blocked Samsung Pay (even as a separate download) until Samsung “partnered” with Verizon on October 21, 2015 and continues to block Samsung from preloading Samsung Pay on its devices:

Outside of some of those UI changes, Verizon once again has made it clear that they want you using Android Pay instead of Samsung Pay. I say that because the Note 7 from Big Red, even as a Samsung device that features MST and all of the

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139 Colin Gibbs. *Confirmed: Verizon only major U.S. carrier that is not pre-loading Samsung Pay on Galaxy S7*. <http://www.fiercewireless.com/story/confirmed-verizon-only-major-us-carrier-not-preloading-samsung-pay-galaxy/2016-03-09>

140 *Supra* ¶ 98–101

technology needed to support Samsung Pay, doesn't include Samsung Pay out of the box. Nope, you have to go find it on Google Play and then install it. Otherwise, Android Pay is pre-loaded as the default payment system (I wonder why?). While I'm fine with Android Pay, it's baffling to me that Samsung, who has been pushing hard to get its own mobile payment system in the hands of as many people as possible, would simply say, "Sure, you can keep Samsung Pay off your variant! Cheers, bros!"

And remember, when Samsung Pay launched last year, Verizon kept it from us all as long as they could, offering up a garbage excuse about them "evaluating" it longer than anyone else on the planet needed to. To see it not included out of the box here isn't surprising in the sense that this is how Verizon works, it's just surprising that Samsung still lacks power to go to bat for their own features.<sup>141</sup>

#### **F. Verizon Blocked Samsung Internet 4.0**

114. No reply to Paragraph 114 is necessary.

115. Verizon doesn't deny that on January 22, 2016, Samsung released version 4.0 of its Web browser, Samsung Internet, which introduced support for content blocker extensions. Verizon doesn't deny content blocker extensions can reduce data transfer volume by filtering out advertising/tracking elements used by companies like AOL/Verizon. I admit I quoted an article by Jules Wang available on the "third party website" of Pocketnow; however, I dispute Verizon's claim that it "cannot admit or deny whether the Complaint completely or accurately quotes" the article. Verizon admits Paragraph 6 of the Complaint "appears to accurately quote" an article available on the Web site of The Wall Street Journal. Otherwise, I agree with Verizon that the article speaks for itself:

Researchers found that ads made up 18 to 79 percent of any given page's data load. They also found that JavaScript elements were rarely associated with article content and that they added 6 to 68 percent to that load. All that serves to sap consumers' data plans and jack up load times.<sup>142</sup>

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141 Kellen Barranger. *Verizon's Galaxy Note 7 Another Example of Carriers Interfering for No Good Reason*. <http://www.droid-life.com/2016/08/22/verizons-galaxy-note-7-another-example-carriers-interfering-no-good-reason/>

142 Jules Wang. *Adblocker guilt? Not when news sites pack up to half their pages with ads*.

116. No reply to Paragraph 116 is necessary.

117. Verizon doesn't deny Samsung preloaded Samsung Internet 4.0 on its Galaxy S7 and Galaxy S7 edge smartphones compatible with the wireless networks of AT&T, Sprint, T-Mobile, and other carriers. Contrary to Verizon's distortions, I did NOT assert Verizon must preload particular applications (or sell particular devices preloaded with particular applications); however, I DID assert the Commission's rules prohibit Verizon from interfering with *edge providers' choice* to preload particular applications or their choice to not preload particular applications. Section 27.16(e) of the Commission's rules states, "No licensee may disable features on handsets it provides to customers," but Verizon believes it can circumvent this rule by explicitly or implicitly requesting that an edge provider disable features *before* Verizon will provide handsets to customers. However, the *700 MHz Second Report and Order* required C Block licensees to allow "customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice" to foster "greater balance between device manufacturers and wireless service providers," and the *2012 Order and Consent Decree* affirms Verizon may not "explicitly or implicitly request" that applications be made unavailable to customers. Verizon vacuously says it doesn't block device suppliers from preloading the applications of their choice on devices other carriers provide to customers, but Verizon doesn't deny it blocks device suppliers from preloading the applications of their choice on devices Verizon provides to customers. Also, I dispute Verizon's claim that it does not "block" edge providers from offering applications as separate downloads: Verizon blocked Samsung from offering Samsung Internet 4.0 as a separate download before March 28, 2016. See *supra* ¶ 42 for citations. Verizon doesn't deny Samsung told technology journalist Walt Mossberg (The Wall

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<http://pocketnow.com/2016/03/17/adblockers-news-sites-data>

Street Journal, All Things Digital, Recode, The Verge) that Verizon blocked Samsung from preloading Samsung Pay on its devices:

Samsung says Verizon barred including Samsung's browser and Samsung Pay out of the box.<sup>143</sup>

118. Verizon doesn't deny it blocked Samsung from preloading Samsung Internet 4.0 on its Galaxy S7 and Galaxy S7 edge smartphones. Please refer to the reply to Paragraph 117, above.

119. No reply to Paragraph 119 is necessary.

**G. Verizon Compelled Samsung to Preload Caller Name ID and Blocked Samsung from Integrating Whitepages**

120. On February 21, 2016, Whitepages announced it would partner with Samsung to integrate caller identification features into the Galaxy S7 and Galaxy S7 edge. See the announcement by Lisa Bowers available on the Web site of Whitepages.<sup>144</sup> I admit it is in Verizon's self-interest to permit its customers to access Verizon's Caller Name ID as an integrated feature but not permit its customers to access Whitepages as an integrated feature.

121. Verizon admits it sold Samsung Galaxy S7 and Galaxy S7 edge devices that weren't integrated with Whitepages (but were integrated with Verizon's Caller Name ID). Contrary to Verizon's distortions, I did NOT assert Verizon must integrate particular features (or sell particular devices integrated with particular features); however, I DID assert the Commission's rules prohibit Verizon from interfering *with edge providers' choice* to integrate particular features (*e.g.*, Whitepages) or their choice to not integrate particular features (*e.g.*,

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143 Walt Mossberg. *Mossberg: Samsung's New Galaxy S7 Phones Are Beautiful*.

<https://recode.net/2016/03/08/mossberg-samsungs-new-galaxy-s7-phones-are-beautiful/>

144 Lisa Bowers. *Samsung's Galaxy S7: Using Whitepages to Improve Caller Identification and Spam Detection*. <http://blog.whitepages.com/samsung-and-whitepages-partnership/> (February 21, 2016)

Verizon's Caller Name ID). Section 27.16(e) of the Commission's rules states, "No licensee may disable features on handsets it provides to customers," but Verizon believes it can circumvent this rule by explicitly or implicitly requesting that Samsung not integrate Whitepages into its handsets *before* Verizon will provide them to customers. However, the *700 MHz Second Report and Order* required C Block licensees to allow "customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice" to foster "greater balance between device manufacturers and wireless service providers," and the *2012 Order and Consent Decree* affirms Verizon may not "explicitly or implicitly request" that applications be made unavailable to customers. See *supra* ¶ 42 for citations.

## **VII. VERIZON MISLEADS AND DECEIVES CUSTOMERS BY STATING THIRD-PARTY DEVICES THAT ARE COMPATIBLE WITH ITS NETWORK ARE NOT**

122. Contrary to Verizon's claims, the iPhone 5s (Model A1453), iPhone 5c (Model A1456), and iPhone 5 (Model A1429) sold by other carriers, for example, NorthwestCell (an LTE in Rural America partner with Verizon), support code division multiple access (CDMA), support LTE Band 13, and are compatible with the Verizon Wireless network. Verizon doesn't deny that at least as early as April 23, 2015, Verizon had inaccurately stated that customers switching from other carriers can't use their existing iPhones:

I currently have iPhone with AT&T or another carrier. Can I keep my current iPhone when I switch to Verizon?

No, you'll need an iPhone that is built to work on the Verizon Wireless network.<sup>145</sup>

123. Verizon admits that in a letter dated January 18, 2016 (over 69 weeks after Apple released the iPhone 6 and iPhone 6 Plus), Verizon acknowledged "its website needed to be

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145 Verizon Wireless. *Apple iPhone FAQs*.

<https://web.archive.org/web/20150423130433/https://www.verizonwireless.com/support/iphone-faqs/>



updated.”

124. Verizon mentions “sound network management practices” (Paulrajan Declaration ¶ 6) but neglects to quote specific text for any of its practices or provide evidence that it has reasonably applied them, as required by 47 CFR § 27.16(f). Verizon insists it “welcomes” third-party devices, as “both Verizon and its customers benefit when third party devices can be used on the Verizon network”;<sup>146</sup> however, Verizon can lock customers into long-term equipment installment plans/contracts and get more equipment revenue for itself by blocking (or delaying “certification” of) third-party devices. I reiterate that an iPhone 5 (Model A1429) sold by NorthwestCell (an LTE in Rural America partner with Verizon) is the *same* (not just similar) A1429 model as an iPhone 5 sold by Verizon. Please refer to the reply to Paragraph 122, above.

125. Please refer to the reply to Paragraph 40, above.

#### **VIII. VERIZON OFFERS VAGUE AND SPECIOUS ALLEGATIONS (INSTEAD OF SPECIFIC EXPLANATIONS) FOR DENYING NETWORK ACCESS**

126. As discussed in the replies to Paragraphs 43 and 44, Verizon denies it “impermissibly” blocked or delayed certification of the Nexus 7 and claims Asus initially submitted the Nexus 7 to Verizon in August 2013 but neglects to provide evidence substantiating this claim. Verizon alleges that because of a vague “systems issue” it uncovered, Google and Asus chose to release KitKat (version 4.4 of the Android operating system) before submitting the Nexus 7 to Verizon’s “certification” process again; however, Verizon neglects to specify the “systems issue” it alleged existed or provide evidence substantiating its allegations.

127. Verizon’s November 2013 letter responded to a letter Jeff Jarvis sent to the FCC in September or October 2013,<sup>147</sup> not the reply to Verizon’s November 2013 letter quoted in

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146 *Id.* ¶ 3.

147 Jeff Jarvis. *Verizon responds, and so do I.* <http://buzzmachine.com/2013/09/19/verizon->

Paragraph 126 of the Complaint.

128. Please refer to the replies to Paragraphs 52–54 of the Answer, above.

129. Please refer to the replies to Paragraphs 52–54 of the Answer, above.

130. I admit I quoted an interview with Dave Burke, VP of engineering for the Android platform and Nexus devices at Google, available on the “third party website” of Ars Technica, a publication of Condé Nast. I agree with Verizon that the excerpt speaks for itself:

What happens now is when you've got a Verizon SIM in the device, it actually installs Verizon apps as part of the setup flow, and then you can remove them if you want as part of the Play Infrastructure. And Verizon can update it.<sup>148</sup>

131. The fact that Google was able to deliver software to the Asus Nexus 7 tablets that allowed them to work on the Verizon network is relevant to its ability to deliver software necessary to allow the Nexus 7 to work on Verizon’s network. They are the same device, with the same hardware and same software. Google clearly had a way to deliver “Verizon Wireless software” to devices sold by Google, other carriers, and independent retailers. Please refer to the reply to Paragraph 52 of the Answer, above.

**IX. COUNT ONE: VIOLATIONS OF 47 USC § 202(a) AND 47 CFR §§ 8.5, 8.11, AND 27.16 FOR INTERFERING WITH CUSTOMERS' ABILITY TO USE THE DEVICES OF THEIR CHOICE**

132. I incorporate the preceding paragraphs of this reply as if fully set forth herein.

133. Please refer to the reply to Section III of the Answer, above. Verizon mentions “sound network management practices,” (Paulrajan Declaration ¶ 6) denies it “impermissibly blocked” customers from activating SIMs for third-party devices, and claims the Commission's

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[responds/](#)

148 Ron Amadeo. *Transcript: Ars talks to Android execs about Lollipop and the Nexuses.* <http://arstechnica.com/gadgets/2014/10/transcript-ars-talks-to-android-execs-about-lollipop-and-the-nexuses/>

rules “expressly” permit “this approach” but neglects to quote specific text for any of its “sound network management practices” or provide evidence that it has reasonably applied them. The Commission *has* expressly recognized manipulative whitelisting and the importance of standards transparency:<sup>149</sup> Verizon's *ipse dixit* isn't enough. See 47 CFR § 27.16(f): “Once a complainant sets forth a *prima facie* case that the C Block licensee has refused to attach a device or application in violation of the requirements adopted in this section, the licensee shall have the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards in the complainant's case.” As set forth above, Verizon blocked customers from activating SIMs for Apple iPhone 6 and iPhone 6 Plus devices sold by competing sources from September 19, 2014 to August 13, 2015. As discussed in the reply to Paragraphs 55 and 57, above, Microsoft makes TWO versions of the Surface 3: a Wi-Fi-only version and a Wi-Fi + 4G LTE version. The LTE version (sold by AT&T, T-Mobile, Verizon, Microsoft, and independent retailers) supports LTE Band 13 and is compatible with the Verizon Wireless network.

**A. Verizon Denies, Limits, and Restricts the Ability of Its Customers to Use the Devices of Their Choice**

134. No reply to Paragraph 134 is necessary.

135. Verizon mentions “sound network management practices,” (Paulrajan Declaration ¶ 6) denies it “impermissibly blocks” customers from activating SIMs for third-party devices, and claims the Commission's rules “expressly” permit “this approach” but neglects to quote specific text for any of its “sound network management practices” or provide evidence that it has reasonably applied them. The Commission *has* expressly recognized manipulative whitelisting

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<sup>149</sup> 22 FCC Rcd. 15372 ¶ 224 (2007)

and the importance of standards transparency:<sup>150</sup> Verizon's *ipse dixit* isn't enough. See 47 CFR § 27.16(f): “Once a complainant sets forth a *prima facie* case that the C Block licensee has refused to attach a device or application in violation of the requirements adopted in this section, the licensee shall have the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards in the complainant's case.” Please refer to the reply to Section III of the Answer, above. Verizon says the Asus Nexus 7, Apple iPhone 6 and iPhone 6 Plus, and Motorola Nexus 6 “initially” could not be identified or certified but neglects to explain why, for example, it took until August 13, 2015 (forty-seven weeks) to whitelist third-party iPhone 6 and iPhone 6 Plus devices, even though customers sought approval to use them at least as early as September 22, 2014. The Commission requires Verizon to “expeditiously” review requests from consumers to employ third-party devices:

We believe that standards transparency should greatly reduce the potential for manipulative “white-listing,” *i.e.*, providers creating complex and vague qualification and approval processes for third parties before approval to attach devices or run applications on the network. In addition to publishing any applicable standards, providers must establish a reasonable process for expeditiously reviewing requests from manufacturers, application developers and consumers to employ devices and applications on their networks. If a provider denies such a request, it must offer a specific explanation and an opportunity for amendment of the request to accommodate the provider's concerns.<sup>151</sup>

136. I dispute Verizon's denial that it has engaged in manipulative whitelisting.

In every country in which Apple has retail stores and most of the developed world, except the United States, Apple directly sells iPhones through its Web site “SIM-free” only. Even though AT&T, T-Mobile, and many other carriers worldwide that collectively serve billions of customers provision SIMs separately from devices, Verizon insists it must block customers from activating

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<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

SIMs for devices it doesn't whitelist in order to ensure that a device has been “certified” for the Verizon network. See the reply to Paragraph 40, above, for citations.

137. Verizon insists it “welcomes” third-party devices, as “both Verizon and its customers benefit when third party devices can be used on the Verizon network”;<sup>152</sup> however, Verizon can lock customers into long-term equipment installment plans/contracts and get more equipment revenue for itself by blocking (or delaying “certification” of) third-party devices. I reiterate that Verizon promptly “certified” devices sold by Verizon but failed to expeditiously review requests from consumers to employ the same models sold by competing sources.

**B. Verizon Blocked Non-Harmful Devices**

138. No reply to Paragraph 138 is necessary.

139. To the extent Verizon's standards are just “industry standards with a few Verizon supplements,”<sup>153</sup> as Verizon claimed, edge providers can certify that devices “comply with Verizon's published technical standards or otherwise are compatible with Verizon's network.”<sup>154</sup> In every country in which Apple has retail stores and most of the developed world, except the United States, Apple directly sells iPhones through its Web site “SIM-free” only. Even though AT&T, T-Mobile, and many other carriers worldwide that collectively serve billions of customers provision SIMs separately from devices, Verizon insists blocking customers from activating SIMs for devices it doesn't whitelist is “reasonable network management.” See *supra* ¶ 39 for

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152 Paulrajan Declaration ¶ 3.

153 Matt Buchanan. *Verizon's Open Door Policy: What It Actually Means*.

<http://gizmodo.com/369961/verizons-open-door-policy-what-it-actually-means> (March 20, 2008) [Developers can build devices and applications that run on Verizon's network without going through most of Verizon's red tape. As David McCarley, executive director of technology, said, “Anything that can take advantage of an IP address is in play.” The specs for open devices are basically just industry standards with a few “Verizon supplements.”]

154 Answer ¶ 46.

citations. Verizon mentions “sound network management practices” (Paulrajan Declaration ¶ 6), denies it “impermissibly blocked” customers from activating SIMs for third-party devices, and claims the Commission’s rules “expressly” permit “this approach” but neglects to quote specific text for any of its “sound network management practices” or provide evidence that it has reasonably applied them. The Commission *has* expressly recognized manipulative whitelisting and the importance of standards transparency:<sup>155</sup> Verizon’s *ipse dixit* isn’t enough. See 47 CFR § 27.16(f): “Once a complainant sets forth a *prima facie* case that the C Block licensee has refused to attach a device or application in violation of the requirements adopted in this section, the licensee shall have the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards in the complainant’s case.”

**C. Blocking Third-Party Devices Limits Consumer Choice**

140. No reply to Paragraph 140 is necessary.

141. No reply to Paragraph 141 is necessary.

142. In every country in which Apple has retail stores and most of the developed world, except the United States, Apple directly sells iPhones through its Web site “SIM-free” only. Even though AT&T, T-Mobile, and many other carriers worldwide that collectively serve billions of customers provision SIMs separately from devices, Verizon insists blocking customers from activating SIMs for devices it doesn’t whitelist is “reasonable network management.” See *supra* ¶ 39 for citations. Verizon mentions “sound network management practices” (Paulrajan Declaration ¶ 6), denies it “impermissibly blocks” customers from activating SIMs for third-party devices, and claims the Commission’s rules “expressly” permit “this approach” but neglects to quote specific text for any of its “sound network management practices” or provide evidence

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<sup>155</sup> 22 FCC Rcd. 15372 ¶ 224 (2007)

that it has reasonably applied them. The Commission *has* expressly recognized manipulative whitelisting and the importance of standards transparency:<sup>156</sup> Verizon's *ipse dixit* isn't enough. See 47 CFR § 27.16(f): “Once a complainant sets forth a *prima facie* case that the C Block licensee has refused to attach a device or application in violation of the requirements adopted in this section, the licensee shall have the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards in the complainant's case.”

**D. Blocking Third-Party Devices Has Anti-Competitive Effects**

143. No reply to Paragraph 143 is necessary.

144. Contrary to Defendant's assertions, Verizon has an incentive to compel customers to purchase devices preloaded with Verizon-backed applications instead of third-party devices not preloaded with Verizon-backed applications and to block edge providers from preloading applications that compete against Verizon-backed applications. The article by Patrick Howell O'Neill published by The Daily Dot speaks for itself:

There's just one catch: In exchange for the major corporate backing, tech reporters at SugarString are expressly forbidden from writing about American spying or net neutrality around the world, two of the biggest issues in tech and politics today.

[...]

Other reporters, who asked not to be named, have confirmed that they have received the same recruiting pitch with the same rules: No articles about surveillance or net neutrality.<sup>157</sup>

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156 *Id.*

157 Patrick Howell O'Neill. *Verizon is launching a tech news site that bans stories on U.S. spying.* <http://www.dailydot.com/politics/verizon-sugarstring-us-surveillance-net-neutrality/> (October 28, 2014) [“There's just one catch: In exchange for the major corporate backing, tech reporters at SugarString are expressly forbidden from writing about American spying or net neutrality around the world, two of the biggest issues in tech and politics today.... Other reporters, who asked not to be named, have confirmed that they have received the same recruiting pitch with the same rules: No articles about surveillance or net neutrality.”]

145. As discussed in the reply to Section III.A of the Answer, above, I dispute Verizon's denial that it “impermissibly blocked” the Asus Nexus 7 (released September 9, 2013) for 22 weeks to suppress competition against Verizon's Ellipsis 7 tablet (released November 7, 2013). As the reply to Paragraph 43 explained, Verizon neglected to specify the “systems issue” it alleged existed or provide evidence substantiating its allegations.

146. I dispute Verizon's denial that it “impermissibly blocked” third-party Nexus 6 smartphones (released October 29, 2014) for 29 weeks to suppress competition against Verizon's Droid Turbo smartphone (released October 30, 2014). Please refer to the reply to Section III.C of the Answer, above. I further dispute Verizon's denial that it imposed discriminatory pricing on customers who used third-party devices with existing SIMs. Please see refer to the reply to Section IV of the Answer, above.

147. I dispute Verizon's denial that it “impermissibly blocked” third-party Apple iPhone 6 and iPhone 6 Plus devices for 47 weeks to compel customers to purchase devices from Verizon and affiliated retailers. Please refer to the reply to Section III.B of the Answer, above.

**E. Blocking Third-Party Devices (that are the Same Models Sold by Verizon) isn't Reasonable Network Management**

148. Verizon states that it isn't clear “whether, when, how, or in what forum” Verizon was required—but failed to—present evidence of “reasonable network management.” See 47 CFR § 27.16(f) (“Once a complainant sets forth a *prima facie* case that the C Block licensee has refused to attach a device or application in violation of the requirements adopted in this section, *the licensee shall have the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards in the complainant's case.*”) (emphasis mine) and the 700 MHz Second Report and Order (“In addition to publishing any



applicable standards, providers must establish *a reasonable process* for *expeditiously* reviewing requests from manufacturers, application developers and consumers to employ devices and applications on their networks. If a provider denies such a request, *it must offer a specific explanation and an opportunity for amendment of the request to accommodate the provider's concerns.*") (emphasis mine). The Complaint sets forth a *prima facie* case that Verizon failed the Commission's requirements: "systems issue" isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

**F. Verizon Unreasonably Discriminates against Third-Party Devices**

149. Please refer to the reply to Paragraph 36 of the Answer, above. I dispute Verizon's denial that it "impermissibly blocked" third-party devices. See the reply to Section III of the Answer, above.

**G. Verizon's Claim that It Blocked Customers from Activating SIMs for Third-Party Devices to Protect Its Network Lacks Merit**

150. Verizon's abuse of its position as "gatekeeper" includes disabling Embedded Apple SIMs, blocking Samsung from preloading Samsung Pay, *etc.* As discussed many times above in response to other Paragraphs of the Answer, Verizon claims "reasonable network management" but neglects to substantiate its claims. The Commission *has* expressly recognized manipulative whitelisting and the importance of standards transparency:<sup>158</sup> Verizon's *ipse dixit* isn't enough. See 47 CFR § 27.16(f): "Once a complainant sets forth a *prima facie* case that the C Block licensee has refused to attach a device or application in violation of the requirements

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158 22 FCC Rcd. 15372 ¶ 224 (2007)

adopted in this section, the licensee shall have the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards in the complainant's case.”

151. Verizon states that it isn't clear “whether, when, how, or in what forum” Verizon was required—but failed to—present evidence of “reasonable network management” and accuses me of failing to set forth a *prima facie* case that Verizon failed the Commission's requirements. See *supra* ¶ 148 for the requirements and the Complaint for the case: “systems issue” isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

152. I dispute Verizon's allegations contained in Paragraph 152 for the reasons stated many times above. Among other things, Verizon says the referenced third-party devices are “not the same” as the versions sold by Verizon but neglects to specify, for example, how an iPhone 6 (Model A1549) sold by AT&T is “not the same” as an iPhone 6 (Model A1549) sold by Verizon. Verizon states that it isn't clear “whether, when, how, or in what forum” Verizon was required—but failed to—present evidence of “reasonable network management” and accuses me of failing to set forth a *prima facie* case that Verizon failed the Commission's requirements. See *supra* ¶ 148 for the requirements and the Complaint for the case: “systems issue” isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

153. Paragraph 153 of the Complaint stated what it stated, no more, no less. Verizon

offers SIM cards for prepaid service separately from devices: customers can purchase them from the carrier's online store or from retail stores like Walmart, without entering a device identifier to check against a whitelist.<sup>159</sup> I reiterate that AT&T,<sup>160</sup> T-Mobile,<sup>161</sup> and many other carriers worldwide that collectively serve billions of customers provision SIMs for both prepaid and also postpaid service separately from devices, and clearly, they can still protect their networks.

154. As discussed above, Paragraph 153 of the Complaint stated what it stated, no more, no less.

155. Verizon's abuse of its position as “gatekeeper” includes disabling Embedded Apple SIMs, blocking Samsung from preloading Samsung Pay, *etc.* In every country in which Apple has retail stores and most of the developed world, except the United States, Apple directly sells iPhones through its Web site “SIM-free” only. Even though AT&T, T-Mobile, and many other carriers worldwide that collectively serve billions of customers provision SIMs separately from devices, Verizon insists it must block customers from activating SIMs for devices it doesn't whitelist in order to “protect its network and customers.” See *supra* ¶ 39 for citations. For the reasons set forth above, Verizon's *ipse dixit* isn't enough. See 47 CFR § 27.16(f): “Once a complainant sets forth a prima facie case that the C Block licensee has refused to attach a device or application in violation of the requirements adopted in this section, the licensee shall have the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards in the complainant's case.”

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159 Subsequent activation can be achieved, for example, with a “dummy IMEI” or a whitelisted IMEI associated with a device attribute composite code (DACC) compatible with the third-party device.

160 AT&T. *SIM Cards*. <https://www.att.com/shop/wireless/devices/simcards.html> (March 20, 2016)

161 T-Mobile. *SIM Card Starter Kit*. <https://www.t-mobile.com/cell-phones/t-mobile-3-in-1-sim-starter-kit.html> (March 20, 2016)

**X. COUNT TWO: VIOLATIONS OF 47 USC § 202(a) AND 47 CFR §§ 8.5, 8.11, AND 27.16 FOR IMPOSING DISCRIMINATORY PRICING ON BRINGING YOUR OWN DEVICE**

156. I incorporate the preceding paragraphs of this reply as if fully set forth herein.

157. Please refer to the reply to Section IV of the Answer, above. Verizon admits that it did not draw a distinction between customers who “purchased a device” from Verizon and those who brought their own devices and that it *did* draw a distinction between customers “financing a device purchase” through Verizon and those who brought their own devices.<sup>162</sup> Of course, the Complaint argues that Verizon *should* distinguish between a subsidized device purchase and bringing your own device (unsubsidized) and that Verizon *shouldn't* distinguish between financing (unsubsidized) and bringing your own device (unsubsidized). Verizon doesn't deny that on MORE Everything plans with data transfer caps of 6 GB or higher, over 24 months, the effective line access charge is \$360 to finance a smartphone through Verizon but \$960 to bring your own smartphone. I dispute that making the use of third-party devices more expensive is a “permitted incentive” for compelling customers to finance devices through Verizon. For the reasons stated above, I dispute Verizon's denial that it continues to impose discriminatory effective line access charges (after considering subsidies/discounts) on customers bringing their own devices.

158. Verizon's comments appear intended to conflate subsidized device purchases and bringing your own device (unsubsidized). Please refer to the reply to Paragraph 69, above.

159. Verizon's comments appear intended to conflate subsidized device purchases and bringing your own device (unsubsidized). Please refer to the reply to Paragraphs 67–68, above.

160. Verizon's comments appear intended to conflate subsidized device purchases and

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<sup>162</sup> Ambio Declaration ¶ 13.

bringing your own device (unsubsidized). Verizon doesn't deny that on MORE Everything plans with data transfer caps of 6 GB or higher, over 24 months, the effective line access charge is \$360 to finance a smartphone through Verizon but \$960 to bring your own smartphone. For the reasons stated above, I dispute Verizon's denial that it continues to impose discriminatory effective line access charges (after considering subsidies/discounts) on customers bringing their own devices.

**A. Verizon Disadvantages the Ability of Customers to Use the Devices of Their Choice**

161. No reply to Paragraph 161 is necessary.

162. Please refer to the replies to Section IV and Paragraphs 157–160, above.

**B. The “No Blocking” Rule Prohibits Discriminatory Pricing**

163. I dispute Verizon's claim that the “no blocking” rule does not refer to or apply to pricing. The *2015 Open Internet Order* states: “Finally, as with the 2010 no-blocking rule, today's no-blocking rule prohibits broadband providers from charging edge providers a fee to avoid having the edge providers' content, service, or application blocked from reaching the broadband provider's end-user customer.”<sup>163</sup> Otherwise, carriers could effectively block devices and applications by imposing inefficiently high fees. Although the Open Internet Orders specifically address edge providers' ability to make content, applications, and services available to customers, 47 CFR § 8.5 clearly protects customers' ability to use non-harmful devices by prohibiting discriminatory pricing.

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163 30 FCC Rcd. 5649 ¶ 113 (2015) [“Finally, as with the 2010 no-blocking rule, today's no-blocking rule prohibits broadband providers from charging edge providers a fee to avoid having the edge providers' content, service, or application blocked from reaching the broadband provider's end-user customer.”]

**C. Imposing Discriminatory Pricing on Bringing Your Own Device Has Anti-Competitive Effects**

164. Please refer to the replies to Section IV and Paragraphs 157–160, above.

165. I reiterate that for customers on MORE Everything plans with data transfer caps of 6 GB or higher, the effective line access charge (after any discount) is \$15/month to finance a smartphone through Verizon but \$40/month to bring your own smartphone from a competing source. Over 24 months, the effective line access charge is \$360 to finance a smartphone through Verizon but \$960 to bring your own smartphone. Please refer to the replies to Section IV and Paragraphs 157–160, above.

**D. Verizon Unreasonably Discriminated against Bringing Your Own Device**

166. I reiterate that Verizon's discriminatory pricing violated Section 202(a) of the Communications Act. See *supra* ¶ 163 for a reply to Verizon's Legal Analysis at Section III: Section 8.5 of the Commission's rules also clearly protects customers' ability to use non-harmful devices by prohibiting discriminatory pricing.

**E. According to Its Own Public Disclosures, Verizon Should've Applied Line Access Discounts for Customers who Brought Their Own Devices**

167. No reply to Paragraph 167 is necessary.

168. As discussed in reply to Paragraph 65, The MORE Everything Plan FAQs on Verizon's Web site stated Verizon applies line access discounts “if you have a smartphone with Verizon Edge or are on a month-to-month agreement,” and the main public-facing Web page for the MORE Everything plan explicitly stated (without even mentioning discounts) that for customers who bring their own devices, the line access charge is \$25/month for data transfer caps up to 4 GB and \$15/month for data transfer caps of 6 GB or higher. Additionally, customer bills list the discounts by name (\$15 or \$25 off “month to month line access discount”).

According to its own public disclosures, Verizon should've applied its appropriately-named month-to-month line access discounts for customers on month-to-month agreements.

169. I reiterate that according to its own public disclosures, Verizon should've applied its appropriately-named month-to-month line access discounts for customers on month-to-month agreements.

**F. Verizon's Semantic Gymnastics Don't Make Imposing Discriminatory Pricing on Bringing Your Own Device a “Permitted Incentive”**

170. No reply to Paragraph 170 is necessary.

171. I dispute that making the use of third-party devices more expensive is a “permitted incentive” for compelling customers to finance devices through Verizon. Please refer to the reply to Paragraphs 68–69, 157–160, above.

172. No reply to Paragraph 172 is necessary.

173. I reiterate that customers could have saved money by purchasing third-party devices at prices lower than those offered by Verizon and affiliated retailers, but the discriminatory pricing discussed in Section IV suppressed this competition. Verizon claims that “it certainly could not prevent customers from purchasing a device from another party or compel customers to pay [*sic*] a device from Verizon” and that “if Verizon were engaged in discriminatory pricing (which it denies), then that only would have incentivized customers to purchase devices from elsewhere, rather than from Verizon”; however, as discussed in Section III, Verizon could disadvantage or even prevent customers from purchasing compatible devices from elsewhere by delaying “certification,” by blocking customers from activating SIMs, or even by compelling device providers to disable network support in firmware for devices sold by competing sources. See *supra* ¶ 42.

174. Please refer to the reply to Paragraph 163 of the Answer, above: Section 8.5 of the Commission's rules clearly protects customers' ability to use non-harmful devices by prohibiting discriminatory pricing.

**XI. COUNT THREE: VIOLATIONS OF 47 USC § 201(b) AND 47 CFR §§ 8.5, 8.11, AND 27.16 FOR INTERFERING WITH EDGE PROVIDERS' ABILITY TO MAKE THE DEVICES OF THEIR CHOICE AVAILABLE TO CUSTOMERS**

175. I incorporate the preceding paragraphs of this reply as if fully set forth herein.

176. Please refer to the reply to Section V of the Answer, above. As discussed above, I dispute Verizon's denials that it compelled edge providers to disable FM radio capabilities and that it disabled (or compelled Apple to disable) Embedded Apple SIMs.

177. No reply to Paragraph 177 is necessary.

178. For the reasons set forth in the reply to Section V of the Answer, above, I dispute Verizon's denials that it violated the *700 MHz Second Report and Order*, 47 CFR §§ 8.5 and 8.11, and Section 201(a) of the Communications Act with respect to FM radio capabilities or Embedded Apple SIMs. In its Legal Analysis at Section IV.A, Verizon erroneously claims the Open Internet and C Block Rules do not apply to FM radio. However, FM radio is a feature that 47 CFR § 27.16(e) prohibits Verizon from disabling: “No licensee may disable features on handsets it provides to customers.”

179. In its Legal Analysis at Section IV.B, Verizon believes it can mislead the Commission with the red herring that Apple doesn't disable the Embedded Apple SIMs in the iPads Apple provides to customers. However, in violation of 47 CFR § 27.16(e), Verizon disables the Embedded Apple SIMs embedded in the iPads *Verizon* provides to customers.



**XII. COUNT FOUR: VIOLATIONS OF 47 USC § 202(a); 47 CFR §§ 8.5, 8.11, AND 27.16; AND THE 2012 ORDER AND CONSENT DECREE FOR INTERFERING WITH CUSTOMERS' ABILITY TO USE THE APPLICATIONS OF THEIR CHOICE AND EDGE PROVIDERS' ABILITY TO MAKE THE APPLICATIONS OF THEIR CHOICE AVAILABLE TO CUSTOMERS**

180. I incorporate the preceding paragraphs of this reply as if fully set forth herein.

181. Please refer to the reply to Section VI of the Answer, above. Contrary to Verizon's distortions, I did NOT assert Verizon must preload particular applications (or sell particular devices preloaded with particular applications); however, I DID assert the Commission's rules prohibit Verizon from interfering with *edge providers' choice* to preload particular applications or their choice to not preload particular applications. Section 27.16(e) of the Commission's rules states, "No licensee may disable features on handsets it provides to customers," but Verizon believes it can circumvent this rule by explicitly or implicitly requesting that an edge provider disable features *before* Verizon will provide handsets to customers. However, the *700 MHz Second Report and Order* required C Block licensees to allow "customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice" to foster "greater balance between device manufacturers and wireless service providers," and the *2012 Order and Consent Decree* affirms Verizon may not "explicitly or implicitly request" that applications be made unavailable to customers. See *supra* ¶ 42 for citations.

182. Verizon denies it blocked third-party tethering applications, but Google confirmed it made tethering applications unavailable at the request of Verizon and other wireless carriers. Verizon denies that it disables built-in tethering features and charges an additional \$20.00/month to re-enable them and alleges the existence of its own "tethering service" (in connection with "certain data plans"), but a sworn declaration by Worldcall Interconnect CEO Lowell Feldman

corroborates that no such “tethering service” exists, and hard evidence proves that Verizon's statements are false: Google's source code repository for the Android operating system shows that AT&T requested that Google disable tethering features Google built into the Asus Nexus 7 (codenamed “deb”) and that AT&T and Verizon requested that Google disable tethering features Google built into the Motorola Nexus 6 (codenamed “shamu”) unless customers pay additional fees to re-enable them. Verizon says the Commission has “acknowledged” that Verizon charges an additional monthly fee for tethering “but has not stated any concern with that practice.”

However, I dispute Verizon's claim that there is no prohibition on application-specific charges for tethering: Even if Verizon was able to deceive the Commission into believing Verizon has its own “tethering service,” acknowledging conduct and not stating concern with conduct aren't the same as expressly endorsing conduct. The plain language of the C Block Rules, the *2010 Open Internet Order*, the *2012 Order and Consent Decree*, articles consistent with this interpretation published by The New York Times and ZDnet, remarks by FCC Chairman Tom Wheeler, and the *2015 Open Internet Order* contradict Verizon's claim. See *supra* ¶ 15 for citations. I reiterate that third-party tethering applications aren't available in Apple's application store, so Verizon effectively has a monopoly on tethering for iPhones.

**A. Verizon Limits Customers' Ability to Use the Devices and Applications of their Choice and Edge Providers' Ability to Develop the Devices and Applications of Their Choice**

183. Contrary to Verizon's distortions, I did NOT assert Verizon must preload particular applications (or sell particular devices preloaded with particular applications); however, I DID assert the Commission's rules prohibit Verizon from interfering with edge providers' choice to preload particular applications or their choice to not preload particular applications. Section 27.16(e) of the Commission's rules states, “No licensee may disable

features on handsets it provides to customers,” but Verizon believes it can circumvent this rule by explicitly or implicitly requesting that an edge provider disable features *before* Verizon will provide handsets to customers. However, the *700 MHz Second Report and Order* required C Block licensees to allow “customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice” to foster “greater balance between device manufacturers and wireless service providers,” and the *2012 Order and Consent Decree* affirms Verizon may not “explicitly or implicitly request” that applications be made unavailable to customers. See *supra* ¶ 42 for citations.

**B. Verizon Requested that Applications be Made Unavailable to Customers**

184. I dispute Verizon's belief that it can explicitly or implicitly request that applications be made unavailable to customers as preloaded applications. As discussed above, contrary to Verizon's distortions, I did NOT assert Verizon must preload particular applications (or sell particular devices preloaded with particular applications); however, I DID assert the Commission's rules prohibit Verizon from interfering with *edge providers' choice* to preload particular applications or their choice to not preload particular applications.

185. No reply to Paragraph 185 is necessary.

186. Please see the replies to Paragraphs 15–19, 32–35.

187. Verizon doesn't deny that Samsung told technology journalist Walt Mossberg that Verizon blocked Samsung from preloading Samsung Pay on its devices, that a Samsung Pay executive said Verizon blocked Samsung Pay over “economics,” and that Verizon admitted that if Samsung were to preload Microsoft OneDrive or Samsung Pay on its devices, Verizon would refuse to sell such devices.

188. No reply to Paragraph 188 is necessary.

**C. Verizon Outright Blocked Applications**

189. Please refer to the replies to Sections VI.C, VI.E, VI.F.

190. Please refer to the replies to Sections VI.C, VI.E, VI.F.

**D. Blocking Applications that Compete against Verizon-Backed Applications Limits Consumer Choice**

191. No reply to Paragraph 191 is necessary.

192. Pay with PayPal competed against Verizon-backed Isis Wallet, Microsoft OneDrive competes against Verizon Cloud, Samsung Pay competes against Verizon-backed Android Pay, Whitepages competes against Verizon's Caller Name ID.

**E. Blocking Applications that Compete against Verizon-Backed Applications Has Anti-Competitive Effects**

193. No reply to Paragraph 193 is necessary.

194. Please refer to the replies to Section XII.D, above.

195. I admit Verizon's "FreeBee" program appears to be available to all content providers but note Verizon is the only content provider that can pay itself for zero-rating.

196. I reiterate that the late David Carr, author of the column The Media Equation for The New York Times, declared that Verizon set "a new low" for news publishing. Shane Snow, co-founder of Contently, said, "I think they [Verizon] overlooked the first rule of storytelling, which is to not deceive the reader."<sup>164</sup>

197. Verizon's abuse of its position as "gatekeeper" includes disabling Embedded Apple SIMs, blocking Samsung from preloading Samsung Pay, *etc.*

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164 David Carr. *Journalism, Independent and Not*.  
<http://www.nytimes.com/2014/11/03/business/media/journalism-independent-and-not.html>

**F. Verizon Stifles Adoption of Innovative Applications**

198. No reply to Paragraph 198 is necessary.

199. On March 1, 2015, Samsung announced it would launch Samsung Pay by summer, but at a summer press briefing, an executive said Verizon held up Samsung Pay over “economics.” Verizon blocked Samsung from offering Samsung Pay (even as a separate download) until after Android Pay eventually launched on September 10, 2015 and even after Samsung Pay launched for devices compatible with the wireless networks of AT&T, Sprint, T-Mobile, and U.S. Cellular on September 28, 2015. Samsung told technology journalist Walt Mossberg (The Wall Street Journal, All Things Digital, Recode, The Verge) that Verizon blocked Samsung from preloading Samsung Pay on its devices. Please refer to the replies to Section VI.E and Paragraph 187 of the Answer, above.

200. Please refer to the replies to Section VI.E and Paragraph 187 of the Answer, above.

**G. Verizon's Practices Are Primarily Motivated by Business Reasons**

201. No reply to Paragraph 201 is necessary.

202. Please refer to the replies to Section VI.E and Paragraph 187 of the Answer, above.

**H. Tethering is a Device Feature, not a “Service” Provided by Verizon**

203. No reply to Paragraph 203 is necessary.

204. I admit I quoted a statement by Debra Lewis, Verizon's director of public relations, in an article by Steven J. Vaughan-Nichols available on the “third party website” of ZDnet, a publication of Ziff Davis. As discussed above (see, *e.g.*, replies to Paragraphs 15 and 82), Verizon denies it blocked third-party tethering applications, but Google confirmed it made

tethering applications unavailable at the request of Verizon and other wireless carriers. Verizon denies that it disables built-in tethering features and charges an additional \$20.00/month to re-enable them and alleges the existence of its own “tethering service” (in connection with “certain data plans”), but a sworn declaration by Worldcall Interconnect CEO Lowell Feldman corroborates that no such “tethering service” exists, and hard evidence proves that Verizon's statements are false: Google's source code repository for the Android operating system shows that AT&T requested that Google disable tethering features Google built into the Asus Nexus 7 (codenamed “deb”) and that AT&T and Verizon requested that Google disable tethering features Google built into the Motorola Nexus 6 (codenamed “shamu”) unless customers pay additional fees to re-enable them. Verizon says the Commission has “acknowledged” that Verizon charges an additional monthly fee for tethering “but has not stated any concern with that practice.” However, I dispute Verizon's claim that there is no prohibition on application-specific charges for tethering: Even if Verizon was able to deceive the Commission into believing Verizon has its own “tethering service,” acknowledging conduct and not stating concern with conduct aren't the same as expressly endorsing conduct. The plain language of the C Block Rules, the *2010 Open Internet Order*, the *2012 Order and Consent Decree*, articles consistent with this interpretation published by The New York Times and ZDnet, remarks by FCC Chairman Tom Wheeler, and the *2015 Open Internet Order* contradict Verizon's claim. See *supra* ¶ 15 for citations.

205. As discussed above, Verizon denies that it disables built-in tethering features and charges an additional \$20.00/month to re-enable them and alleges the existence of its own “tethering service” (in connection with “certain data plans”), but a sworn declaration by Worldcall Interconnect CEO Lowell Feldman corroborates that no such “tethering service”

exists, and hard evidence proves that Verizon's statements are false: Google's source code repository for the Android operating system shows that AT&T requested that Google disable tethering features Google built into the Asus Nexus 7 (codenamed “deb”) and that AT&T and Verizon requested that Google disable tethering features Google built into the Motorola Nexus 6 (codenamed “shamu”) unless customers pay additional fees to re-enable them. See *supra* ¶ 15 for citations.

206. No reply to Paragraph 206 is necessary.

207. I reiterate that just as Wi-Fi is a feature of routers (from edge providers like Cisco, Motorola, Netgear, *etc.*), not a “service” provided by fixed Internet service providers (like AT&T, Charter, Comcast, Verizon, *etc.*), tethering is a feature of mobile devices (from edge providers like Apple, Google, Microsoft, *etc.*), not a “service” provided by Verizon or any other carrier. (The only “service” Verizon “provides” is re-enabling built-in tethering features if customers pay additional fees. As discussed above, Verizon and other carriers compel device providers to alter built-in tethering features to check this.) I admit I quoted an article by Karl Bode available on the “third party website” of DSLReports. I agree with Verizon that the article speaks for itself:

In Verizon's case, they cleverly pretended the functionality in a number of these phones was ... a “special feature” they were offering free access to for a limited time, so it looked less crooked when they crippled the devices at a later date and forced users to pay for functionality traditionally embedded in Android for free. A number of people seem to buy this logic, not understanding that this is functionality that comes embedded in the phone and/or OS by default, and Verizon is creating a false fee layer by disabling the device's ability to function as a modem or hotspot – then pretending they provide it as a “service.” The result is users paying a substantial monthly fee for Verizon doing absolutely nothing.<sup>165</sup>

208. I reiterate that however much data Verizon may *expect* customers will transfer

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165 Karl Bode. *Verizon Cripples Embedded Android Hotspot Functionality – Making Your Device Less Useful and More Expensive*. <https://www.dslreports.com/shownews/Verizon-Cripples-Embedded-Android-Hotspot-Functionality-115097> (July 11, 2011)

doesn't justify prophylactically disabling built-in tethering features and charging an additional \$20.00/month to re-enable them. As Commission Chairman Tom Wheeler suggested, Verizon *should* expect that customers on unlimited data plans are paying, after all, for unlimited service.<sup>166</sup> Section 27.16(c)(1) of the Commission's rules explicitly states, "The potential for excessive bandwidth demand alone shall not constitute grounds for denying, limiting or restricting access to the network."

209. Verizon states that it doesn't understand the assertions contained in Paragraph 209. The statement by Verizon's director of public relations (cited by Paragraph 204) expects and assumes customers who tether will transfer more data than customers who do not: "The tethering fee charged by Verizon Wireless reflects the fact that customers who tether multiple devices may be *expected* to use more data than customers who do not.... If they choose to tether additional devices they are required to pay an additional fee to account for the greater usage." (Emphasis mine.)

210. I reiterate that Verizon controls how much bandwidth it provisions for its customers.

211. No reply to Paragraph 211 is necessary.

212. For the reasons set forth above, I dispute Verizon's denial that disables built-in tethering features and charges an additional \$20.00/month to re-enable them. See *supra* ¶ 15.

213. I admit I quoted an article by Jon Brodtkin available on the "third party website" of Ars Technica, a publication of Condé Nast. The Verizon spokesperson quoted by the article

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166 Jon Brodtkin. *FCC chair accuses Verizon of throttling unlimited data to boost profits.* <http://arstechnica.com/business/2014/07/fcc-chair-accuses-verizon-of-throttling-unlimited-data-to-boost-profits/> ["Reasonable network management" concerns the technical management of your network; it is not a loophole designed to enhance your revenue streams.]



admitted Verizon doesn't need to impose even “a limited approach” to throttle customers paying for bandwidth-based data plans:

We asked Verizon if the net neutrality rules had any effect on its decision, but the company did not give a yes or no answer. A spokesperson said, “We make these types of business decisions all the time—because it was such a small subset of customers who were being impacted, we made the call to discontinue even a limited approach to manage throttling.”<sup>167</sup>

214. Verizon doesn't deny less than one percent of Verizon subscribers still have bandwidth-based data plans. The Complaint, Note 131 defines bandwidth-based (“unlimited”) data plans.

**I. Verizon Unreasonably Discriminates against Applications that Compete against Verizon-Backed Applications**

215. Contrary to Verizon's distortions in its Legal Analysis at Section V, I did NOT assert Verizon must preload particular applications (or sell particular devices preloaded with particular applications); however, I DID assert the Commission's rules prohibit Verizon from interfering with *edge providers' choice* to preload particular applications or their choice to not preload particular applications. Section 27.16(e) of the Commission's rules states, “No licensee may disable features on handsets it provides to customers,” but Verizon believes it can circumvent this rule by explicitly or implicitly requesting that an edge provider disable features *before* Verizon will provide handsets to customers. However, the *700 MHz Second Report and Order* required C Block licensees to allow “customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice” to foster “greater balance between device manufacturers and wireless service providers,” and the

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167 Jon Brodtkin. *Verizon stopped throttling 3G data when net neutrality rules took effect.* <http://arstechnica.com/information-technology/2015/08/verizon-finally-stopped-throttling-3g-phones-on-unlimited-data-plans/>

*2012 Order and Consent Decree* affirms Verizon may not “explicitly or implicitly request” that applications be made unavailable to customers. See *supra* ¶ 42 for citations.

**J. Blocking Device Providers from Preloading Applications is Blocking**

216. Please refer to the replies to Sections VI.D and VI.E and Paragraph 187, above.

217. No reply to Paragraph 217 is necessary.

218. No reply to Paragraph 218 is necessary.

219. I reiterate that discussing the requirements of 47 CFR § 8.5 in the *2015 Open Internet Order*, the Commission prohibited BIAS providers from charging fees to avoid having content, services, or applications blocked.<sup>168</sup> Please refer to the replies to Section VI.E and Paragraph 187, above.

**K. Even if Edge Providers Try to Offer Devices Directly to Customers, Verizon Can Still Block Them**

220. No reply to Paragraph 220 is necessary.

221. Verizon states that it isn't clear what is meant by the claim that “Verizon's retail operations dominate device sales” for its subscribers. A 2013 Consumer Intelligence Research Partners study found that of the carriers, Verizon gets the biggest proportion of device sales—57 percent—from its own stores. See the Complaint ¶ 26. Verizon believes it can mislead the Commission with red herrings about non-Verizon customers and other channels. Retaliation refers to refusing to sell Samsung devices preloaded with Samsung Pay in *Verizon's retail channels* and delaying *Verizon customers'* ability to use Samsung Pay (even as a separate download) until after Verizon-backed Android Pay launched. It makes sense for Verizon to permit its customers to access Verizon-backed Android Pay as a preloaded application but not

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168 30 FCC Rcd. 5649 ¶ 113 (2015)

permit its customers to access Samsung Pay as a preloaded application. Verizon's refusal to sell Samsung devices preloaded with Samsung Pay<sup>169</sup> influenced Samsung to not preload Samsung Pay on its devices sold through Verizon's dominant retail channels.

**XIII. COUNT FIVE: VIOLATIONS OF 47 CFR § 8.3 FOR STATING DEVICES THAT ARE COMPATIBLE WITH ITS NETWORK ARE NOT**

222. I incorporate the preceding paragraphs of this reply as if fully set forth herein.

223. No reply to Paragraph 223 is necessary.

224. No reply to Paragraph 224 is necessary.

225. No reply to Paragraph 225 is necessary.

226. Please refer to the replies to Sections III.D and VII of the Answer, above.

**XIV. COUNT SIX: VIOLATIONS OF 47 CFR §§ 8.3 AND 27.16 FOR OFFERING VAGUE AND SPECIOUS ALLEGATIONS (INSTEAD OF SPECIFIC EXPLANATIONS) FOR DENYING NETWORK ACCESS**

227. I incorporate the preceding paragraphs of this reply as if fully set forth herein.

228. No reply to Paragraph 228 is necessary.

229. I agree with Verizon that Section 27.16(f) of the Commission's rules speaks for itself.

230. No reply to Paragraph 230 is necessary.

231. Please refer to the replies to Section III.A and Paragraph 126, above. I reiterate that the Commission requires Verizon to “expeditiously” review requests to employ third-party devices and offer “specific” explanations:

We believe that standards transparency should greatly reduce the potential for

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169 Walt Mossberg. *Mossberg: Samsung's New Galaxy S7 Phones Are Beautiful*. <https://recode.net/2016/03/08/mossberg-samsungs-new-galaxy-s7-phones-are-beautiful/> [“Samsung says Verizon barred including Samsung's browser and Samsung Pay out of the box.”]

manipulative “white-listing,” *i.e.*, providers creating complex and vague qualification and approval processes for third parties before approval to attach devices or run applications on the network. In addition to publishing any applicable standards, providers must establish a reasonable process for *expeditiously* reviewing requests from manufacturers, application developers and consumers to employ devices and applications on their networks. *If a provider denies such a request, it must offer a specific explanation and an opportunity for amendment of the request to accommodate the provider's concerns.* Finally, the Commission will ensure the sufficient openness of any network management practices and selected technical standards in the event the approach outlined above proves unsatisfactory.<sup>170</sup>

232. Please refer to the replies to Section III.A and Paragraphs 126 and 231, above.

233. No reply to Paragraph 233 is necessary.

234. Please refer to the replies to Section III.B and Paragraphs 36 and 149, above.

235. No reply to Paragraph 235 is necessary.

236. I reiterate that Verizon suggested it was “evaluating” and extensively “testing”

Pay with PayPal and Samsung Pay for technical reasons even though it was actually “evaluating” how to suppress competition against Verizon-backed Isis Wallet and Android Pay. Please refer to the replies to Sections V.A, VI.C, VI.E and Paragraphs 187, above.

## **XV. PRAYER FOR RELIEF**

237. Wherefore, I respectfully ask the Commission to take enforcement action that will deter Verizon from continuing to interfere with my ability to use the devices and applications of my choice and edge providers' ability to make the devices and applications of their choice available to me:

**A. Declare that Verizon Willfully and Repeatedly Violated 47 USC § 202(a); 47 CFR §§ 8.3, 8.5, 8.11, and 27.16; and the 2012 Order and Consent Decree**

238. The Complaint sets forth a *prima facie* case that Verizon failed the Commission's

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<sup>170</sup> 22 FCC Rcd. 15372 ¶ 224 (2007) (emphasis mine)

requirements: “systems issue” isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

**B. Ensure Edge Providers Can Independently Certify Devices and Applications**

239. No reply to Paragraph 239 is necessary.

240. No reply to Paragraph 240 is necessary.

241. No reply to Paragraph 241 is necessary.

242. No reply to Paragraph 242 is necessary.

243. I admit I quoted an article by Wilson Rothman available on the “third party website” of Gizmodo, a publication of Univision Communications; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint completely and accurately quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Otherwise, I agree with Verizon that the article speaks for itself.<sup>171</sup>

244. I admit I quoted an article by Micah Singleton available on the “third party website” of The Verge, a publication of Vox Media; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint completely and accurately quotes” the article.

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171 Wilson Rothman. Verizon Says You Can Port From Sprint, Build Your Own Phone. <http://gizmodo.com/326896/verizon-says-you-can-port-from-sprint-build-your-own-phone> (November 27, 2007) [If somebody has the technical capability of building a device on a breadboard and they want to bring it to be tested, the philosophy of this program says “Have at it!” If it is tested and passes, it can get on the network. Does it make it hard to be the small guy on the block? Not now, with availability of components, etc. The provider of the device would have some fee that they would pay. I think it's going to be surprisingly reasonable - it's not gonna have many many zeroes on the back. They will be very reasonable fees for professional services rendered.]

Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Otherwise, I agree with Verizon that the article speaks for itself:

In a letter to backers, Nextbit CEO Tom Moss said the company was too bullish and didn't fully realize the cost of getting the CDMA version of the Robin to work on Verizon's network.... “What people at the carriers, in good faith given our need for quick answers, thought would take ‘weeks’ has turned into ‘months,’” he continued. “What they thought would cost ‘hundreds of thousands of dollars’ has turned into ‘millions’. And we’re still not there.”

[...]

But despite an innovative feature to address one of tech's biggest issues, and a creative design that intrigued enough users to raise over a million dollars on Kickstarter, it still wasn't enough to deal with the hassle that is getting a phone approved on Verizon's network. And that may say more about the carrier than the company.<sup>172</sup>

245. I admit I quoted an article by Nicholas Deleon available on the “third party website” of VICE Media; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint completely and accurately quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Otherwise, I agree with Verizon that the article speaks for itself:

“Because the direct-to-consumer [model] is kinda growing pretty quickly, what you’re having is the existing business model where you as a [manufacturer] sell to the carrier as opposed to us as people is fundamentally broken,” Croyle said. “The cost to go through the carrier lab, the staff to man them... and at the end of the day, the consumer gets a bunch of bloatware.”<sup>173</sup>

246. I admit I quoted an article by Walt Mossberg available on the “third party

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172 Micah Singleton. *Nextbit cancels the Verizon and Sprint version of the Robin, issues refunds: Verizon's approval process was too much for the startup.*

<http://www.theverge.com/2016/3/17/11253400/nextbit-cancels-verizon-sprint-robin-refunds>

173 Nicholas Deleon. *The High Cost of Carrier Certification Is Killing Unique Smartphones.* <https://motherboard.vice.com/read/nextbit-cancels-verizon-robin> (March 17, 2016)

website” of Recode, a publication of Vox Media; however, I dispute Verizon's claim that it “cannot admit or deny whether the Complaint completely and accurately quotes” the article. Verizon admits Paragraph 6 of the Complaint “appears to accurately quote” an article available on the Web site of The Wall Street Journal. Otherwise, I agree with Verizon that the article speaks for itself:

Second, something like Google’s bold but failed original Nexus plan is going gangbusters — in China. Multiple home-grown phone makers there, notably Xiaomi, sell often surprisingly classy phones largely online at low prices. They don’t worry about carriers. Consumers buy the phones, then separately buy plans from carriers and pop the relevant SIM card into their shiny new handsets.

[...]

A few months ago, while in Beijing and Shenzhen visiting some of the top makers of Chinese-branded smartphones, I was repeatedly told that the number one thing that stopped these companies from entering the U.S. market was the power of the carriers.<sup>174</sup>

247. The CEO of an American company told Mossberg that clearing “certification” processes at the four big U.S. carriers would cost more than building and selling the first major production run of a new handset:

So why should the owners and sellers of the networks even have vast chains of stores? Why should they sell phones and tablets and subtly or otherwise steer customers to certain models? Why should they be able to dictate certain hardware and software features (like bloatware apps for carrier services) to weaker or more pliable manufacturers (pretty much every manufacturer not named Apple)?

Why, in an era when networks are well understood and most components standardized, should handset makers be required to undergo onerous “certification” processes that allow carriers to demand changes to the design of their devices if they want to use them on the network? One small-company American tech CEO told me the other day that it will cost him more to clear “certification” processes at the four big U.S. carriers than to build and sell the first major production run of a new handset he’s planning to launch.

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174 Walt Mossberg. *Mossberg: It's Time to Free the Smartphone*.  
<https://recode.net/2015/09/16/mossberg-its-time-to-free-the-smartphone/>

And why should Android updates, including those that enhance security, be delayed for months by carriers?

“The first customer of a smartphone maker in the U.S. today has to be the carrier, and that’s not good for the consumer,” said David Morken, CEO of Republic Wireless, a small carrier that mainly routes calls and texts over Wi-Fi rather than cellular towers.

Think about this for a minute. Does your home landline broadband provider sell laptops or Roku or iPads or any of the other things that make use of the Wi-Fi or wired connections it provides? Does it require Dell or HP to “certify” that their devices work with their networks. No, and no.

So why should wireless carriers be any different?<sup>175</sup>

248. I admit I quoted technology journalists Walt Mossberg (The Wall Street Journal, All Things Digital, Recode, The Verge) and Nilay Patel.

249. No reply to Paragraph 249 is necessary.

250. I reiterate that the late Steve Jobs wanted to bypass carriers<sup>176</sup> (but signed a five-year exclusivity deal with AT&T after Verizon rejected the iPhone). Before Apple launched the iPhone, he complained about having to go through “orifices” (carriers) to make devices available to end users:

We're not very good at going through orifices to get to the end users....

The carriers now have gained the upper hand in terms of the power of the relationship with the handset manufacturers. And they're starting to tell the handset manufacturers what to build. And if Nokia and Motorola don't listen to

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175 *Id.*

176 Chris Davies. *Jobs schemed Apple WiFi carrier plot for original iPhone.* <http://www.slashgear.com/jobs-schemed-apple-wifi-carrier-plot-for-original-iphone-16195619/> (November 16, 2011) [Still, the networks haven't taken Apple's attempts lying down. Rumored plans to use an embedded SIM in future iPhone models, that would allow Apple to directly activate the smartphone for consumers and then switch them between networks with little to no contact with the actual carriers themselves were supposedly junked after operators revolted. Apple execs “have been sent back to the drawing board with their tails between their legs” sources close to negotiations claimed, with the threat of subsidies being removed forcing them to reconsider.]



them, well, Samsung and LG will. So the handset manufacturers are really getting these big thick books from the carriers, telling them “here's what your phone's gonna be.”<sup>177</sup>

251. Please refer to the replies to Section V.B and Paragraph 179, above.

252. Apple—which has its own retail stores and is the most valuable company and brand in the world—has enough leverage to do its Verizon certification tests itself,<sup>178</sup> offer unlocked devices compatible with the Verizon Wireless network directly to customers (and at the same time, sell devices inside Verizon's retail operations), and preload Apple Pay on its devices. (However, Verizon pretended it was “evaluating” and doing certification tests for Samsung Pay but was actually delaying competition against Verizon-backed Android Pay.) Contrary to Verizon's distortions, to the extent Verizon is blocking edge providers with less leverage than Apple from doing their own certification tests themselves, the Commission has the authority to order Verizon to not block edge providers from doing their own certification tests themselves.

253. The Complaint sets forth a *prima facie* case that Verizon failed the Commission's requirements: “systems issue” isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked

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177 Nilay Patel. *Five years after the iPhone, carriers are the biggest threat to innovation*. <http://www.theverge.com/2012/7/5/3138711/five-years-after-the-iphone-carriers-are-the-biggest-threat-to-innovation-editorial>

178 Walt Mossberg. Nilay Patel. Ctrl-Walt-Delete: Walt and Nilay on the Edge at 29 minutes, 5 seconds. <http://www.theverge.com/2016/3/10/11193170/ctrl-walt-delete-samsung-galaxy-s7-edge> [Walt Mossberg: There's no Verizon crap on the iPhone. None! In fact, years ago, I went to a Verizon test lab ... I went and visited it, and I looked around, and they were very proud. They were showing me the test lab. There were a bunch of phones lying around. I saw Motorola, Samsung, BlackBerry, whatever, and I said to them, “How come there are no iPhones lying around?” And they fumbled around and said, “Oh, well, Apple does its Verizon certification tests itself in its own lab ... but we have an engineer there!” And Apple just doesn't do that, doesn't let its phones be a sales tool for the carriers, and Samsung feels like it has to....]

Samsung Pay, *etc.*

**C. Ensure Verizon Doesn't Interfere with My Ability to Use the Devices and Applications of Their Choice or Edge Providers' Ability to Make the Devices and Applications of Their Choice Available to Me**

254. The Complaint sets forth a *prima facie* case that Verizon failed the Commission's requirements: "systems issue" isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

255. The Complaint sets forth a *prima facie* case that Verizon failed the Commission's requirements: "systems issue" isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

256. Please refer to the reply to Section III.B, above.

257. The Complaint sets forth a *prima facie* case that Verizon failed the Commission's requirements: "systems issue" isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

258. As discussed above, Verizon's *ipse dixit* isn't enough. See 47 CFR § 27.16(f): "Once a complainant sets forth a *prima facie* case that the C Block licensee has refused to attach a device or application in violation of the requirements adopted in this section, the licensee shall have the burden of proof to demonstrate that it has adopted reasonable network standards and

reasonably applied those standards in the complainant's case.”

259. The Complaint sets forth a *prima facie* case that Verizon failed the Commission's requirements: “systems issue” isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

**D. Require Verizon to Equalize Pricing between Purchasing a Device through Verizon and Bringing Your Own Device**

260. Contrary to Verizon's distortion that this section requests that the Commission “dictate” pricing, the Commission has already prohibited “additional discriminatory charges (one-time or recurring) or conditions on customers who seek to use devices or applications outside of those provided by the licensee.”<sup>179</sup> Verizon's comments appear intended to conflate subsidized device purchases and bringing your own device (unsubsidized). Please refer to the replies to Sections IV and X, above.

261. Please refer to the reply to Paragraph 260 of the Answer, above.

262. The Complaint sets forth a *prima facie* case that Verizon failed the Commission's requirements: “systems issue” isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

**E. Order Verizon to Provision SIMs for Postpaid Service Separately from Devices at Its Online Store, Retail Stores, and by Phone**

263. Please refer to the replies to Paragraphs 153–155, above.

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<sup>179</sup> 22 FCC Rcd. 15371 ¶ 222 (2007)

264. Contrary to Verizon's distortions, to the extent Verizon *could* follow international standards by provisioning SIMs separately from devices but Verizon *elects* to deviate from international standards by blocking customers from activating SIMs separately from devices, the Commission has the authority to order Verizon to *not* block customers from activating SIMs separately from devices. In every country in which Apple has retail stores and most of the developed world, except the United States, Apple directly sells iPhones through its Web site “SIM-free” only. Even though AT&T, T-Mobile, and many other carriers worldwide that collectively serve billions of customers provision SIMs separately from devices, Verizon insists blocking customers from activating SIMs for devices it doesn't whitelist is “reasonable network management.” See *supra* ¶ 39 for citations. The Commission *has* expressly recognized manipulative whitelisting and the importance of standards transparency: Verizon's *ipse dixit* isn't enough. See 47 CFR § 27.16(f): “Once a complainant sets forth a *prima facie* case that the C Block licensee has refused to attach a device or application in violation of the requirements adopted in this section, the licensee shall have the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards in the complainant's case.”

**F. Order Verizon to Widely and Prominently Advertise that It Will Provision SIMs for Customers who Bring Their Own Devices**

265. For the same reasons the Commission can and should require Verizon to not block customers from activating SIMs separately from devices, given Verizon's misleading and deceptive statements about third-party devices,<sup>180</sup> the Commission can and should order Verizon to advertise that it will not block customers from activating SIMs separately from devices.

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<sup>180</sup> *Supra* Sections VII and VIII

266. Verizon disadvantaged and even prevented customers from purchasing compatible devices from competing sources by delaying “certification,” by blocking customers from activating SIMs, and even by compelling device providers to disable network support in firmware for devices sold by competing sources. See *supra* ¶ 42.

267. The Complaint sets forth a *prima facie* case that Verizon made misleading and deceptive statements: Please refer to the replies to Sections VII and VIII of the Answer, above.

**G. Evaluate whether Verizon Possesses the Basic Character Qualifications to Obtain Additional Commission Licenses and Authorizations**

268. The Complaint sets forth a *prima facie* case that Verizon failed the Commission's requirements: “systems issue” isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

**H. Award Damages**

269. The Complaint sets forth a *prima facie* case that Verizon failed the Commission's requirements: “systems issue” isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

270. The Complaint sets forth a *prima facie* case that Verizon failed the Commission's requirements: “systems issue” isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked

Samsung Pay, *etc.*

271. I admit I provided an estimate that extrapolated from historical prices of Nexus 6 devices. I have proof of purchasing the iPhone 5, iPad mini, and Microsoft Surface 3.

I purchased the Motorola Nexus 6, iPhone 5, iPhone 6, and iPhone 5s via craigslist.

272. The Complaint sets forth a *prima facie* case that Verizon failed the Commission's requirements: "systems issue" isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

273. I admit I provided an estimate based on comparing prices between Verizon's service plans and comparable service plans in the United Kingdom.

274. The Complaint sets forth a *prima facie* case that Verizon failed the Commission's requirements: "systems issue" isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

**I. Initiate an Investigation of Verizon's Conduct and Impose Forfeitures**

275. No reply to Paragraph 275 is necessary.

276. The Complaint sets forth a *prima facie* case that Verizon failed the Commission's requirements: "systems issue" isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

## **XVI. PROCEDURAL MATTERS AND SUPPORTING MATERIALS**

277. No reply to Paragraph 277 is necessary.

278. No reply to Paragraph 278 is necessary.

279. The Complaint sets forth a *prima facie* case that Verizon failed the Commission's requirements: "systems issue" isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, *etc.*

280. No reply to Paragraph 280 is necessary.

281. Verizon expresses its belief that I didn't appear interested in or amenable to the possibility of settlement prior to filing the Complaint. I disagree with Verizon's characterization: I was interested and amenable to Verizon ceasing to engage in *prima facie* violations of the Commission's rules and made this clear in two separate letters. After Verizon twice didn't appear interested in or amenable to recognizing *prima facie* violations of the Commission's rules, I believed additional correspondence would be fruitless and asserted my claims before the Commission.

282. No reply to Paragraph 282 is necessary.

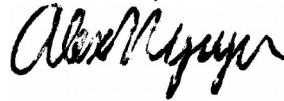
## **XVII. REPLY TO VERIZON'S AFFIRMATIVE DEFENSES**

**First Affirmative Defense.** Verizon's First Affirmative Defense is not an affirmative defense; it is a denial of the sufficiency of the Complaint. However, insofar as it qualifies as an affirmative defense, I aver that the Complaint satisfies the requirements of Section 1.721 of the Commission's rules. The Complaint sets forth a *prima facie* case that Verizon violated 47 USC §§ 201(b) and 202(a); 47 CFR §§ 8.3, 8.5, 8.11, and 27.16; and the 2012 *Order and Consent*

*Decree*: “systems issue” isn't a specific explanation, 47 weeks isn't expeditious, Verizon's claim that Google didn't have a way to deliver software to devices sold by Google is absurd, Verizon disabled Embedded Apple SIMs, Samsung told Walt Mossberg that Verizon blocked Samsung Pay, etc.

**Second Affirmative Defense.** I filed the Complaint on July 26, 2016, but Verizon erroneously states August 4, 2014 instead of July 26, 2014 as the date two years prior to the filing date. In particular, Verizon's conduct between July 26, 2014 and July 31, 2014 occurred before Verizon's compliance obligations under the *2012 Order and Consent Decree* expired. Between these dates, Verizon was still selling the Samsung Galaxy S4 (for which Verizon disabled Blocking Mode) and Galaxy S5 (for which Verizon blocked Samsung from preloading Pay with PayPal).

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